



Non-GAAP financial measures

Handbook

US GAAP

April 2026



kpmg.com/us/en/frv



Contents

Foreword.....	1
Acknowledgments	2
About this publication	3
1. Executive summary.....	6
2. Scope	11
3. Sources of SEC’s non-GAAP rules	19
4. General requirements.....	35
5. Specific considerations.....	70
6. Earnings releases and similar announcements	96
7. Foreign private issuers (FPIs)	101
8. Controls and non-GAAP financial measures.....	108
Appendix 1: Regulation G	120
Appendix 2: Regulation S-K Item 10(e)	123
Appendix 3: Instruction 2 to Item 2.02	126
Appendix 4: Compliance & Disclosure Interpretations	128
KPMG Financial Reporting View	144

SEC continues to focus on non-GAAP financial measures

Presenting non-GAAP financial measures can be a balancing act. Investors rely on such information to understand a company's performance and liquidity, and yet the SEC staff are focused on making sure that such measures do not undermine the presentation of a company's GAAP-based financial position and financial results.

The SEC issued rules on non-GAAP financial measures in 2003. Since then, the SEC staff have supplemented these rules by issuing a number of Compliance & Disclosure Interpretations (C&DIs) to provide additional guidance about how companies are allowed to use non-GAAP financial measures, specifically listing prohibited practices.

The SEC staff historically have been very active in ensuring compliance with SEC requirements concerning non-GAAP financial measures, as evident by non-GAAP financial measures being a perennial topic in SEC speeches. That focus continues today, with non-GAAP financial measures routinely ranking near the top of the annual list of topics appearing in staff comments.

Despite the scrutiny placed on non-GAAP financial measures by the SEC staff, companies continue to believe that these measures play a critical role in their communications with investors, and that investors rely on that information to understand a company's performance and liquidity.

Against this backdrop of perceived importance, this Handbook explains our understanding of the SEC requirements related to non-GAAP financial measures.

Timothy Brown, Erin McCloskey and Melissa Rocha

Department of Professional Practice of KPMG LLP

Acknowledgments

This Handbook has been produced by the Department of Professional Practice (DPP) of KPMG LLP in the United States.

We would like to acknowledge the efforts of the main contributors to this edition:

[Megan Marshall](#)

[Melissa Rocha](#)

We would also like to acknowledge the current and former members of DPP who contributed significantly to this Handbook: Timothy Brown, Hannah Conley, Wade Fanning, Steven Kenney, Joan Rood, Landon Westerlund.

About this publication

The purpose of this Handbook is to assist you in understanding the SEC requirements and the SEC staff's interpretations and views related to the use of non-GAAP financial measures.

The rules and interpretations

The rules referred to in this publication that govern the presentation of non-GAAP financial measures mainly comprise the following.

- Regulation G, Conditions for Use of Non-GAAP Financial Measures (reproduced in [Appendix 1](#)).
- Regulation S-K Item 10(e), Use of non-GAAP financial measures in Commission filings (reproduced in [Appendix 2](#)).
- Instruction 2 to Item 2.02, The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (17 CFR 229.10(e)(1)(i)) shall apply to disclosures under this Item 2.02 (reproduced in [Appendix 3](#)).

The SEC staff have also published a series of interpretations that include guidance and examples for use in applying the rules above – the Compliance & Disclosure Interpretations (C&DIs), updated December 2022 (reproduced in [Appendix 4](#)).

While this Handbook is focused on SEC requirements, it also references other authoritative literature, where relevant, to help frame practical application. For example, paragraph 4 of PCAOB Auditing Standard 2710 (Other Information in Documents Containing Audited Financial Statements) is cited in connection with auditors' responsibilities when non-GAAP financial measures are included in documents containing audited financial statements.

In addition, the following Topics and Subtopic from the *FASB Accounting Standards Codification*[®] (ASC) are referenced.

- Topic 205, Presentation of Financial Statements
- Topic 230, Statement of Cash Flows
- Topic 250, Accounting Changes and Error Corrections
- Topic 260, Earnings Per Share
- Topic 280, Segment Reporting
- Topic 326, Financial Instruments—Credit Losses
- Topic 606, Revenue from Contracts with Customers
- Subtopic 720-35, Other Expenses – Advertising Costs
- Topic 842, Leases
- Topic 932, Extractive Activities—Oil and Gas

Organization of the text

Each chapter of this publication provides in-depth guidance presented through Q&As that reflect the questions we are encountering in practice and include

examples to illustrate key concepts. Relevant excerpts from SEC authorities are included in the appendices for reference.

Our commentary is referenced to SEC authorities and to other literature, where applicable. The following are examples:

- G Rule 100(a)(2) is Rule 100(a)(2) of SEC Regulation G.
- S-K Item 10(e)(1) is Item 10(e)(1) of SEC Regulation S-K.
- S-X Article 11 is Article 11 of SEC Regulation S-X.
- C&DI 100.01 is section 100.01 of the SEC’s Compliance and Disclosure Interpretations.
- FR-65.II.B.2 is paragraph II.B.2 of the adopting release of the SEC’s Final Rule: Conditions for Use of Non-GAAP Financial Measures.
- Regs Comm 03/2019 is a meeting of the SEC Regulations Committee in March 2019.
- 230-10-45-3 is paragraph 45-3 of ASC Subtopic 230-10.
- 2024 AICPA Conf is the 2024 AICPA & CIMA National Conference on Current SEC and PCAOB Developments.
- AS 2710.04 is paragraph 4 of PCAOB Auditing Standard 2710.

Abbreviations

We use the following abbreviations in this Handbook.

AICPA	American Institute of Certified Public Accountants
ASC	Accounting Standards Codification
ASU	Accounting Standards Update
C&DI	Compliance & Disclosure Interpretations
CD&A	Compensation Discussion & Analysis
CECL	Current expected credit losses
CODM	Chief operating decision maker
DCP	Disclosure Controls and Procedures
EBIT	Earnings before interest and taxes
EBITDA	Earnings before interest, taxes, depreciation and amortization
EPS	Earnings per share
FASB	Financial Accounting Standards Board
FFO	Funds from operations
FPI	Foreign Private Issuer
GAAP	Generally accepted accounting principles
ICFR	Internal control over financial reporting
IPO	Initial public offering
KPIs	Key performance indicators
MD&A	Management’s Discussion & Analysis

MJDS	Multi-Jurisdictional Disclosure System
MPM	Management-defined performance measure
PCAOB	Public Company Accounting Oversight Board
PV-10	Present value at 10%
REIT	Real estate investment trust
ROI	Return on investment
SEC	Securities and Exchange Commission

1. Executive summary

There are many types of non-GAAP measures – financial, operating, statistical, regulatory and statutory measures. The SEC rules explained in this Handbook relate to non-GAAP *financial* measures. These rules permit registrants to include many non-GAAP financial measures in SEC filings but impose several conditions on their use. We call these rules ‘the non-GAAP rules’ in this Handbook even though they apply only to non-GAAP *financial* measures.

A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that is not determined under US GAAP. These measures are widely used by registrants to provide investors with information and insights into their historical and future financial performance, financial position and cash flows.

Types of non-GAAP financial measures

Non-GAAP financial measures fall into one of two categories: performance measures and liquidity measures.

Performance measure	Based on performance that differs from that presented in the financial statements (e.g. income or loss before taxes or net income or loss) as calculated based on GAAP.
Liquidity measure	Based on liquidity that differs from cash flows or cash flows from operations as calculated based on GAAP.

Most of the SEC's non-GAAP rules apply equally to measures in both categories, but some of the rules are tailored based on the category.

Read more: [Chapter 2](#)

Sources of SEC's non-GAAP Rules

In 2003, the SEC issued and adopted FR-65 (the final rules) related to use of non-GAAP financial measures as mandated by the Sarbanes-Oxley Act. The final rules:

- created *Regulation G*, which includes the basic requirements and applies to publicly disclosed or released material information containing a non-GAAP financial measure;
- amended *Item 10 of Regulation S-K* (S-K Item 10(e)), Form 20-F and other regulations, which impose requirements in addition to those in Regulation G for filed non-GAAP financial measures, including specific prohibitions; and
- revised *Form 8-K* to require registrants to ‘furnish’ the SEC with earnings releases and similar announcements of financial information for completed annual and interim periods. Instruction 2 to Item 2.02 of Form 8-K requires disclosures incremental to Regulation G about furnished non-GAAP financial measures.

The SEC staff have issued various FAQs and Compliance & Disclosure Interpretations (C&DIs) to assist in implementing the requirements adopted in the final rules, but the final rules have changed very little.

Read more: [Chapter 3](#)

General requirements

The SEC staff have consistently emphasized that evaluating the appropriateness of a non-GAAP financial measure requires careful consideration of the specific facts and circumstances. In addition, use of a non-GAAP financial measure by one registrant does not necessarily mean it is appropriate for all registrants to make similar disclosures because the focus should be on why the measure is useful for a particular registrant’s investors.

The following table summarizes the requirements related to the use of non-GAAP financial measures in SEC filings.

Disclosure requirements/ prohibitions	Public disclosures: Reg G	Filings: Reg S-K Item 10(e)	In an Item 2.02 Form 8-K	
			Furnished to the SEC	Filed with the SEC
Non-GAAP financial measure cannot be misleading ¹	✓	✓	✓	✓
Presentation of most directly comparable GAAP measure is required	✓	✓	✓	✓
Reconciliation from most directly comparable GAAP measure is required	✓	✓	✓	✓
Presentation cannot be more prominent than the most directly comparable GAAP measure ²		✓	✓	✓
Statement disclosing reasons management believes the measure is useful to investors is required		✓	✓	✓
Statement disclosing any additional purpose, to the extent material, for which management uses the measure is required		✓	✓	✓
Excluding items that require cash settlement from liquidity measure is prohibited		✓		✓

Disclosure requirements/ prohibitions	Public disclosures: Reg G	Filings: Reg S-K Item 10(e)	In an Item 2.02 Form 8-K	
			Furnished to the SEC	Filed with the SEC
Adjustments to GAAP earnings for nonrecurring, infrequent or unusual items is prohibited		✓		✓
Prohibitions exist related to placement of non-GAAP financial measures		✓		✓
Use of misleading titles or descriptions prohibited ³		✓		✓
<p>Notes:</p> <ol style="list-style-type: none"> 1. The SEC staff frequently remind registrants that they need to consider whether a non-GAAP measure is misleading or a tailored accounting principle – especially when introducing a new measure or revising a previously disclosed measure. 2. The SEC staff frequently remind registrants that the prominence principle requires disclosure of a comparable GAAP measure with equal or greater prominence and applies wherever a non-GAAP measure appears in a filing (absent GAAP requirements). 3. The SEC staff frequently remind registrants that the labeling principle requires appropriate description of the label and clear explanation of the non-GAAP adjustments made to a measure. 				

Read more: [Chapter 4](#)

Specific considerations

There are specific issues to several types of non-GAAP financial measures. This Handbook also includes information on the intersection between the recent amendments to Topic 280 and the SEC’s non-GAAP rules.

EBIT and EBITDA

EBIT and EBITDA are commonly used non-GAAP financial measures. Measures described as EBIT or EBITDA may include only the specific components in their acronym. Any deviation may require the measure’s label to reflect a deviation; for example, it may have to be labeled Adjusted EBIT or Adjusted EBITDA.

EBIT and EBITDA must follow the non-GAAP rules. However, they are not subject to the prohibition of excluding charges or liabilities that require (or will require) cash settlement, or would have required cash settlement absent an ability to settle in another manner.

Segment information in the financial statements

Measures of segment profit or loss and total assets *required* to be disclosed by Topic 280 are not non-GAAP financial measures because they are required by

GAAP. In contrast, any additional measures of profit or loss not required or expressly permitted (i.e. clearly and specifically identified) by Topic 280 are non-GAAP financial measures that must comply with the SEC’s non-GAAP rules.

For example, the measure of segment profit or loss closest to GAAP is a required measure under Topic 280 and therefore is not a non-GAAP financial measure. However, any additional measures of segment profit or loss, while permitted by Topic 280, are non-GAAP financial measures because they are not clearly and *specifically* identified by Topic 280.

Free cash flow

Free cash flow is typically calculated as cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures. If other adjustments are made, the measure may have to be labeled accordingly (e.g. ‘adjusted free cash flow’). Specific disclosures apply.

Read more: [Chapter 5](#)

Earnings releases and similar announcements

Earnings releases and similar announcements are *furnished* to the SEC on an Item 2.02 Form 8-K. However, a registrant may choose to *file* the form. The requirements under the SEC’s non-GAAP rules differ depending on whether the form is furnished versus filed.

Furnish Form 8-K	Comply with Reg G and Instruction 2 to Item 2.02 Form 8-K
File Form 8-K	Comply with Reg G, Reg S-K Item 10(e) and Instruction 2 to Item 2.02 Form 8-K

Exemption: There is an exemption from the requirement to furnish a Form 8-K when earnings information is presented by webcast or other nonwritten communication. There are conditions attached to the exemption.

Read more: [Chapter 6](#)

Foreign private issuers (FPIs)

Non-GAAP financial measures disclosed by FPIs are subject to the provisions of Regs G and S-K Item 10(e), unless specifically exempt.

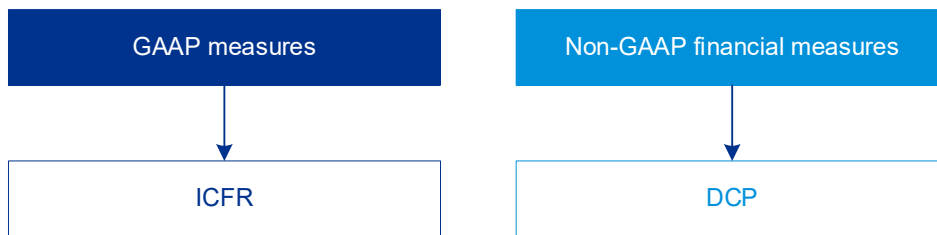
Regulation	Exemption
Reg G	<ul style="list-style-type: none"> Public announcements are exempt if certain conditions are met. Canadian registrants filing Form 40-F under the Multi-Jurisdictional Disclosure System (MJDS) are not subject to the requirements.

Regulation	Exemption
Reg S-K Item 10(e)	<ul style="list-style-type: none"> Investment companies are exempt. Canadian registrants filing Form 40-F under MJDS are exempt. Non-GAAP financial measures furnished on Form 6-K are exempt. Non-GAAP financial measures are exempt from the prohibitions in Reg S-K Item 10(e)(1)(ii) if certain conditions are met (e.g. measure is required or expressly permitted by the FPI's home jurisdiction accounting standard-setter).

Read more: [Chapter 7](#)

Controls and non-GAAP financial measures

Management is responsible for preparing reliable non-GAAP financial measures. The importance of this responsibility has been augmented by the scrutiny and attention the SEC places on these measures. While an investor may rely on both GAAP and non-GAAP financial measures provided by a registrant to make investment decisions, only the GAAP information is in the scope of internal control over financial reporting; see KPMG Handbook, [Internal control over financial reporting](#). The preparation of non-GAAP financial measures generally falls under a registrant's Disclosure Controls and Procedures (DCPs). Topic 280 required measures are GAAP measures and therefore fall under ICFR.



Read more: [Chapter 8](#)

2. Scope

Detailed contents

2.1 How the SEC Rules work

2.2 What is a non-GAAP financial measure?

Questions

Question 2.2.10 What is a non-GAAP financial measure?

Question 2.2.20 What are some common examples of non-GAAP financial measures?

Question 2.2.30 What types of financial measures are excluded from the SEC's definition of a non-GAAP financial measure?

Question 2.2.40 Are non-GAAP operating and statistical measures in the scope of the SEC's non-GAAP rules?

Question 2.2.50 Are non-GAAP regulatory and statutory measures in the scope of the SEC's non-GAAP rules?

Question 2.2.60 Are measures provided in financial statements under Topic 280 considered non-GAAP financial measures?

Example

Example 2.2.10 Revenue per available room

2.3 How are non-GAAP financial measures typically used?

Questions

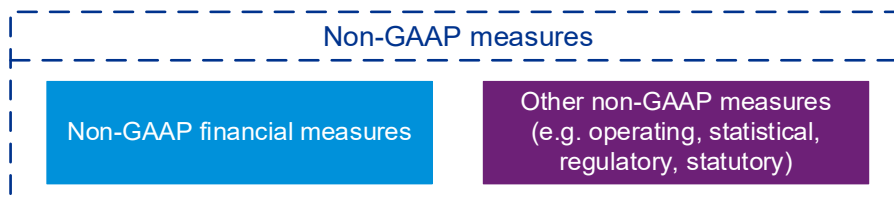
Question 2.3.10 Is there a standardized method for calculating non-GAAP financial measures?

Question 2.3.20 Where are non-GAAP financial measures typically presented?

2.1 How the SEC Rules work

The term ‘non-GAAP measure’ is broader than the term ‘non-GAAP financial measure’, in that it also encompasses operating, certain statistical, regulatory and statutory measures. Only non-GAAP financial measures are subject to the SEC’s non-GAAP rules and oversight discussed in this Handbook.

A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that is not determined under US GAAP. These measures are widely used by registrants to provide investors with information and insights into their historical and future financial performance, financial position and cash flows.



Types of non-GAAP financial measures

Non-GAAP financial measures fall into one of two categories: performance measures and liquidity measures.

Performance measure	Based on performance that differs from that presented in the financial statements (e.g. income or loss before taxes or net income or loss) as calculated based on GAAP.
Liquidity measure	Based on liquidity that differs from cash flows or cash flows from operations as calculated based on GAAP.

Most of the SEC rules on non-GAAP financial measures apply equally to measures in both categories, but some of the rules are tailored based on the category.

2.2 What is a non-GAAP financial measure?

The SEC’s non-GAAP financial measures rules provide guidelines for registrants disclosing non-GAAP financial measures. This Handbook refers to these rules as simply ‘the SEC’s non-GAAP rules’. This section defines ‘non-GAAP financial measures’ and explains what non-GAAP measures are excluded from this definition.

Question 2.2.10 What is a non-GAAP financial measure?

Interpretive response: The SEC defines a non-GAAP financial measure as a numerical measure of a registrant’s historical or future financial performance, financial position or cash flows that: [\[G Rule 101\(a\), S-K Item 10\(e\)\(2\)\]](#)

- **excludes** amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented based on GAAP in the registrant’s income statement, balance sheet or cash flow statement (or equivalent statements); or
- **includes** amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable GAAP measure calculated and presented in conformity with GAAP.

The stated intent of the SEC non-GAAP rules is to include in the definition all measures that have the effect of depicting a measure of either: [\[FR-65.II.A.2.b\]](#)

- performance that differs from that presented in the financial statements (e.g. income or loss before taxes or net income or loss) as calculated based on GAAP; or
- liquidity that differs from cash flows or cash flows from operations computed based on GAAP.

These two types of non-GAAP financial measures are called performance measures and liquidity measures, respectively.

Question 2.2.20 What are some common examples of non-GAAP financial measures?

Interpretive response: Common examples of non-GAAP financial measures include the following (not exhaustive).

Common examples of non-GAAP financial measures	
<ul style="list-style-type: none"> • EBITDA • EBIT • FFO • Adjusted FFO • Adjusted EBITDA • Core earnings 	<ul style="list-style-type: none"> • Adjusted loss • Normalized earnings • Recurring earnings • Normalized EPS • Distributable cash flow • GAAP one-time adjusted

Common examples of non-GAAP financial measures	
<ul style="list-style-type: none"> • Net debt • Free cash flow • Adjusted free cash flow • Earnings excluding restructuring • Net income excluding impairment • Adjusted net income 	<ul style="list-style-type: none"> • GAAP adjusted • Cash earnings • Cash loss • PV-10 • Additional measures of segment profit/loss (refer to Question 2.2.60)

Question 2.2.30 What types of financial measures are excluded from the SEC's definition of a non-GAAP financial measure?

Interpretive response: The SEC's definition of a non-GAAP financial measure excludes financial information that does not in effect provide numerical measures that differ from the comparable GAAP measure. Examples include: [\[FR-65.II.A.2.b\]](#)

- amounts of expected indebtedness, including contracted and anticipated amounts;
- amounts of repayments that have been planned or decided on but not yet made;
- estimated revenues or expenses of a new product line, if those amounts were estimated in the same manner as would be computed under GAAP; and
- measures of profitability and total assets for each segment required for disclosure under the accounting for segment information (see [section 5.3](#)).

Question 2.2.40 Are non-GAAP operating and statistical measures in the scope of the SEC's non-GAAP rules?

Interpretive response: No.

Certain statistical measures and measures of operating performance fall outside the scope of the SEC's definition of a non-GAAP financial measure. [\[FR-65.II.A.2.b\]](#)

Measures excluded from the scope of the SEC's non-GAAP rules include: [\[G Rule 101\(a\)\(2\), S-K Item 10\(e\), FR-65.II.A.2.b\]](#)

- operating and other statistical measures – e.g. unit sales, numbers of employees and numbers of customers;
- ratios and statistical measures calculated using only financial measures calculated based on GAAP and/or operating measures or other measures that are not non-GAAP financial measures. Examples include:
 - sales per square foot or same store sales, if those sales are determined based on GAAP; and

- operating margin calculated by dividing revenues into operating income, if both revenues and operating income are determined based on GAAP.

Key performance indicators or metrics

Depending on the nature of the measure, an operating performance or statistical measure may also be considered a 'key performance indicator or metric', even if it does not meet the SEC's definition of a non-GAAP financial measure. In those cases, additional disclosure or information may be necessary. Key performance indicators and metrics are discussed further in [section 8.4](#).

Example 2.2.10 Revenue per available room

ABC Corp, a hotel REIT, includes a measure in its earnings release that provides revenue per available room (RevPar). RevPar is calculated by dividing room sales for comparable properties by room nights available for the period. Room sales were determined based on GAAP.

ABC's presentation of RevPar is not a non-GAAP financial measure because it is calculated using a GAAP measure (i.e. room sales determined based on GAAP) and an operating measure (i.e. room nights available). If the room sales were adjusted in any manner that would differ from GAAP, the presentation would be considered a non-GAAP financial measure.

Question 2.2.50 Are non-GAAP regulatory and statutory measures in the scope of the SEC's non-GAAP rules?

Interpretive response: No.

While the term 'non-GAAP measure' is broad and can encompass operating and certain statistical measures, it also includes regulatory and statutory measures. However, only non-GAAP financial measures are subject to the SEC's non-GAAP rules and oversight discussed in this Handbook.

Financial measures required by SEC rules (i.e. an SEC-required financial measure) or a system of regulation of a government or governmental authority or self-regulatory organization (i.e. a statutory measure) are not non-GAAP financial measures. [S-K Item 10(e)(5), FR-65.II.A.2.b]

- Examples of SEC-required financial measures include disclosures required by any of the SEC's industry guides and disclosure of taxable income required for real estate partnerships.
- Examples of statutory measures include statutory capital or reserves for financial institutions and statutory losses or premiums for insurance companies.

A registrant should present the financial measures outside of the financial statements unless those measures are required or expressly permitted by the standard-setter responsible for establishing the GAAP used in the financial statements. The reference 'GAAP' is to US GAAP; however, for an FPI, GAAP

refers to the principles under which those primary financial statements are prepared (see [chapter 7](#) for further details).

‘Expressly permitted’ means the particular measure is clearly and specifically identified as an acceptable measure (see [Question 7.3.30](#)). Examples of expressly permitted measures include certain segment information required or expressly permitted under Topic 280 (see [Question 2.2.60](#)). [S-K Item 10(e)(5), C&D 106.01]

When regulatory and statutory measures are considered non-GAAP financial measures

An SEC-required financial measure or statutory measure is a non-GAAP financial measure if it is adjusted to include or exclude amounts otherwise required to be included in or excluded from the measure.

In addition, a financial measure prepared under guidance published by a government or governmental authority or self-regulatory organization is a non-GAAP financial measure if it is *not* a required disclosure by the respective government or governmental authority or self-regulatory organization. A financial measure must be a *required* disclosure by a system of regulation that applies to the registrant to be considered a regulatory or statutory measure not subject to the SEC’s non-GAAP rules. [C&D 102.12]

Question 2.2.60 Are measures provided in financial statements under Topic 280 considered non-GAAP financial measures?

Interpretive response: It depends. The SEC’s definition of a non-GAAP financial measure excludes the following disclosures required or expressly permitted by Topic 280.

The segment measure of profit or loss that is closest to GAAP	This measure is required for each reportable segment.
The segment measure of total assets that is closest to GAAP	This measure is required for each reportable segment.
Other quantitative information regularly provided to the CODM or included in the segment profit or loss measure or assets measure reviewed by the CODM (e.g. revenues, interest income and expense, etc.)	These measures are required for each reportable segment

Any measures of segment profit or loss presented in addition to the measure closest to GAAP are non-GAAP financial measures, even though permitted to be disclosed by Topic 280. For further discussion, see [section 5.3](#) and KPMG Handbook, [Segment reporting \(post-ASU 2023-07\)](#). [C&D 104.01, 280-10-50-22 – 50-26C, 50-28A, 50-28C]

2.3 How are non-GAAP financial measures typically used?

Non-GAAP financial measures are widely used by registrants. Such registrants often present them in conjunction with GAAP measures in MD&A, earnings releases and other communications.

Many registrants use non-GAAP financial measures to provide investors with additional information and insight into historical and future financial performance, financial position and cash flows. One common example is 'adjusted earnings', which may be used to remove nonrecurring items from GAAP earnings to provide a better year-over-year comparison of financial performance.

Question 2.3.10 Is there a standardized method for calculating non-GAAP financial measures?

Interpretive response: Generally no, with some exceptions.

Management generally decides which non-GAAP financial measures are used and how they are calculated. This is in contrast to GAAP measures, which are prepared based on a financial reporting framework that provides a standardized method for understanding a company's historical and future financial performance, financial position and cash flows.

There also is no audit requirement or generally standardized method for calculating non-GAAP financial measures. For example, similarly titled non-GAAP financial measures might not be consistently calculated across a registrant's industry, or more broadly. Further, registrants in the same industry may present entirely different non-GAAP financial measures, which may lead to a lack of comparability.

Nevertheless, expected methods of calculation exist for certain commonly used non-GAAP measures (e.g. EBITDA or free cash flow), and when calculations deviate from those methods, the Division of Corporation Finance staff's expect registrants to clearly label the measure (e.g. Adjusted EBITDA) (see [section 4.7.40](#)).

Nonstandardization increases the importance of disclosure

Because there is no standardized method for calculating most non-GAAP financial measures, disclosure is necessary so that investors can understand the non-GAAP financial measures provided. Management is required to disclose:

- how a non-GAAP financial measure is calculated by reconciling from a comparable GAAP measure;
- why the non-GAAP financial measure is considered useful to investors; and
- whether management uses the non-GAAP financial measure for its own purposes.

[Chapter 4](#) explains the disclosure requirements.

Question 2.3.20 Where are non-GAAP financial measures typically presented?

Interpretive response: Non-GAAP financial measures are often presented in documents or communications required of an SEC registrant, or by companies conducting an initial public offering (IPO). SEC non-GAAP presentation and disclosure requirements may be more or less restrictive depending on where and how the non-GAAP financial measure is presented and communicated (see [section 3.2](#)).

Common examples of where non-GAAP financial measures are presented	
<ul style="list-style-type: none"> • Earnings release in furnished Form 8-K • Earnings release in filed Form 8-K • Earnings calls • Webcasts • Investor presentations 	<ul style="list-style-type: none"> • Websites • Business section of Form 10-K • MD&A section of Form 10-K • MD&A section of Form 10-Q • Operating and Financial Review and Prospects section of Form 20-F

3. Sources of SEC's non-GAAP rules

Detailed contents

3.1 How the SEC Rules work

3.2 SEC rules

- 3.2.10 Reg G applies to public disclosures
- 3.2.20 Reg S-K Item 10(e) applies to filings with the SEC
- 3.2.30 Instruction 2 to Item 2.02 applies to filed and furnished Form 8-Ks
- 3.2.40 C&DIs provide guidance

Questions

Question 3.2.10 What companies are required to apply Reg G?

Question 3.2.20 What constitutes a public disclosure?

Question 3.2.30 What registrants are required to apply Reg S-K Item 10(e)?

Question 3.2.40 What parts of periodic filings are affected by Reg S-K Item 10(e)?

Question 3.2.50 When do Regs G and S-K Item 10(e) apply to Item 2.02 Form 8-K filings that include non-GAAP financial measures?

Question 3.2.60 Are the C&DIs authoritative?

3.3 Exemptions

- 3.3.10 Registered investment companies
- 3.3.20 Proposed business combinations
- 3.3.30 Compensation Discussion & Analysis (CD&A)
- 3.3.40 Free writing prospectus
- 3.3.50 Webcasts and other nonwritten communications

Questions

Question 3.3.10 Are investment companies exempt from the SEC's non-GAAP rules?

Question 3.3.20 What are the specific exemptions from the SEC's non-GAAP rules for proposed business combinations?

Question 3.3.30 Is the CD&A exemption limited to non-GAAP financial measures that relate to the disclosure of target levels?

Question 3.3.40 Does the CD&A exemption apply to the company-selected measure required to be disclosed under the pay vs performance disclosure rules?

Question 3.3.50 Do the SEC's non-GAAP rules apply to a free writing prospectus?

Question 3.3.60 How does Reg G apply to webcasts and other nonwritten communications?

Question 3.3.70 What are the conditions for obtaining an exemption to furnishing Item 2.02 Form 8-K for earnings calls and other nonwritten communications?

Question 3.3.80 Can the exemption apply when a quarterly earnings release is attached as an exhibit to Form 10-Q?

Question 3.3.90 Can the exemption apply to information disclosed during nonwritten communication that was not in the related written announcement or release?

Question 3.3.100 Can a registrant cure its failure to post information on its website about a non-GAAP financial measure disclosed in a nonwritten communication?

3.4 Legal considerations

Questions

Question 3.4.10 How do the liability provisions in Section 18 of the Exchange Act interplay with the SEC's non-GAAP rules?

Question 3.4.20 Does failure to include all information required by Reg G in an Item 2.02 Form 8-K affect the ability to use Form S-3 or to comply with Rule 144 of the Securities Act of 1933?

3.1 How the SEC Rules work

In 2003, the SEC issued and adopted FR-65 (the final rules) related to use of non-GAAP financial measures as mandated by the Sarbanes-Oxley Act. [\[FR-65\]](#)

The final rules:

- created Regulation G, which includes the basic requirements and applies to publicly disclosed or released material information containing a non-GAAP financial measure;
- amended Item 10 of Regulation S-K (S-K Item 10(e)), Form 20-F and other regulations, which impose requirements in addition to those in Regulation G for filed non-GAAP financial measures, including specific prohibitions; and
- revised Form 8-K to require registrants to 'furnish' the SEC with earnings releases and similar announcements of financial information for completed annual and interim periods. Instruction 2 to Item 2.02 of Form 8-K requires disclosures incremental to Regulation G about furnished non-GAAP financial measures.

Although the SEC staff have issued various FAQs and Compliance & Disclosure Interpretations (C&DIs) to assist in the implementation of the requirements adopted in the final rules, the final rules have changed very little. [\[2021 AICPA Conf\]](#)

3.2 SEC rules

The rules on non-GAAP financial measures apply as follows.

Public disclosures	Reg G provides general requirements for the use of non-GAAP financial measures in all public disclosures of material information, whether or not included in SEC filings.
Filings	In a filing with the SEC, the use of non-GAAP financial measures is generally subject to the requirements in S-K Item 10(e). This is in addition to the Reg G requirements.
Earnings releases and similar announcements	<p>Registrants furnish or file an Item 2.02 Form 8-K for earnings releases and similar announcements. In general:</p> <ul style="list-style-type: none"> • when an Item 2.02 Form 8-K is <i>filed</i> with the SEC by a domestic registrant, all of S-K Item 10(e) applies; • when an Item 2.02 Form 8-K is <i>furnished</i> to the SEC by a domestic registrant, certain disclosures in Item 10(e) are required. <p>This is in addition to the Reg G requirements because an earnings release is a public disclosure. Earnings releases and similar announcements are discussed in chapter 5.</p>
C&DIs	The C&DIs addressing non-GAAP financial measures reflect the SEC staff interpretations and views of Reg G, Reg S-K Item 10(e), Item 2.02 Form 8-K, and other SEC rules and regulations.
Foreign private issuers (FPIs)	The application of Regs G and S-K Item 10(e) to FPIs is discussed in chapter 6 .

3.2.10 Reg G applies to public disclosures

Reg G applies to all public disclosures that include non-GAAP financial measures made by a registrant.

Reg G is reproduced in [Appendix 1](#).

Question 3.2.10 What companies are required to apply Reg G?

Interpretive response: Reg G applies to the following types of registrants.

- **Public companies:** Any company that has a class of securities registered under Section 12 of the Exchange Act or is required to file reports under Section 15(d) of the same Act. This includes most publicly traded companies in the US.
- **FPIs:** These companies are generally subject to Reg G unless they meet specific conditions, such as having their securities listed on a non-US exchange and making the disclosure outside the US. See [chapter 7](#) for detailed guidance regarding FPIs.

Reg G also applies when a person, acting on the registrant's behalf, publicly discloses or releases material information that includes a non-GAAP financial measure.

Reg G does not apply to registered investment companies or certain disclosures related to proposed business combinations (see [section 3.3.20](#)).

Voluntary filers

A company may voluntarily file reports under the Exchange Act for a number of reasons – e.g. it may have once had Section 15(d) reporting obligations that were suspended due to there being fewer than 300 holders of the related securities. A voluntary filer is not technically subject to Reg G because it has no reporting responsibility under Sections 13(a) or 15(d) of the Exchange Act. However, according to the SEC staff, a voluntary filer faces significant anti-fraud issues under the federal securities laws if it does not comply with Reg G in presenting non-GAAP financial measures in public disclosures. [\[C&DI 107.01\]](#)

Question 3.2.20 What constitutes a public disclosure?

Interpretive response: The term 'public disclosure' is not defined. Instead, the SEC has stated that whether a disclosure is public depends on all of the facts and circumstances surrounding that disclosure. [\[FR-65.FN31\]](#)

Public disclosures include information that is disclosed publicly (e.g. in a filing with the SEC) and information released publicly (e.g. press releases, earnings releases, registrant websites and investor presentations). Public disclosures are not just written communications. Reg G applies to all types of nonwritten communications, including those made orally, by webcast or broadcast, or through social media (see [section 3.3.50](#)).

A registrant should consult its legal counsel to determine when a disclosure is public and subject to the provisions of Reg G.

3.2.20 Reg S-K Item 10(e) applies to filings with the SEC

Reg S-K Item 10(e) applies when non-GAAP financial measures are presented in SEC filings.

Reg S-K Item 10(e) is reproduced in [Appendix 2](#).

Question 3.2.30 What registrants are required to apply Reg S-K Item 10(e)?

Interpretive response: With exceptions (noted below), all registrants must apply Reg S-K Item 10(e) when filing reports under the Securities Act and the Exchange Act that include non-GAAP financial measures (e.g. annual reports on Form 10-K, current reports on Form 8-K, quarterly reports on Form 10-Q, registration statements, proxy statements).

Reg S-K Item 10(e) does not apply to:

- registered investment companies (see [section 3.3.10](#));
- certain disclosures related to proposed business combinations (see [section 3.3.20](#));
- certain compensation discussion and analysis (CD&A) disclosures (see [section 3.3.30](#));
- free writing prospectuses, unless they are included in or incorporated by reference into a filing under the Securities Act and/or the Exchange Act (see [section 3.3.40](#)); and
- webcasts and other nonwritten communications (see [section 3.3.50](#)).

Whether these scope limitations apply is a legal determination and depends on a registrant's specific facts and circumstances. Management should consult with their securities counsel about interpreting these scope limitations to ensure compliance with the rules. The guidance in this Handbook is not a substitute for the legal services or advice that is required to interpret these scope limitations.

Voluntary filers

Periodic or annual reports (e.g. Form 10-K and Form 20-K) filed by the voluntary filer must comply with Reg S-K. Therefore, such voluntary filings are subject to the provisions of Reg S-K Item 10(e). [\[C&DI 107.01\]](#)

Question 3.2.40 What parts of periodic filings are affected by Reg S-K Item 10(e)?

Interpretive response: Reg S-K Item 10(e) contains requirements for presenting non-GAAP financial information in filings in its scope. However, it also prohibits the presentation of non-GAAP financial measures:

- on the face of a registrant's financial statements or in the accompanying notes; and
- in any pro forma financial information required to be disclosed by Reg S-X Article 11.

Due to these prohibitions, the presentation requirements in Reg S-K Item 10(e) generally only apply to other sections of a filing under the Securities Act and/or the Exchange Act that include non-GAAP financial measures – e.g. MD&A, summary financial information in a registration statement.

3.2.30 Instruction 2 to Item 2.02 applies to filed and furnished Form 8-Ks

Item 2.02 of Form 8-K requires that a domestic registrant *furnish* to the SEC all releases or announcements disclosing material nonpublic financial information about completed annual or quarterly periods that it has not previously disclosed.

A domestic registrant may decide to *file* – as opposed to *furnish* – the Item 2.02 Form 8-K, which has other implications and disclosure requirements.

Instruction 2 to Item 2.02 is reproduced in [Appendix 3](#).

Question 3.2.50 When do Regs G and S-K Item 10(e) apply to Item 2.02 Form 8-K filings that include non-GAAP financial measures?

Interpretive response: When a registrant presents non-GAAP financial measures in an Item 2.02 Form 8-K, Reg G applies to that information, regardless of whether the Form 8-K is filed or furnished.

However, whether Reg S-K Item 10(e) also applies depends on whether the Form 8-K is filed or furnished.

- If Form 8-K is furnished to the SEC, Instruction 2 of Item 2.02 requires the disclosures listed in Reg S-K Item 10(e)(1)(i) (in addition to the Reg G requirements), but does not impose the prohibitions or exemptions in Reg S-K Item 10(e)(1)(ii) and (iii) (see [sections 4.6](#) and [4.7](#)).
- If Form 8-K is filed with the SEC, S-K Item 10(e) applies in its entirety because the Form 8-K is a *filing* under the Exchange Act (see [Question 3.2.30](#)).

3.2.40 C&DIs provide guidance

The C&DIs addressing non-GAAP financial measures reflect the SEC staff's interpretations of and views on Reg G, Reg S-K Item 10(e), Instruction 2 to Item 2.02 Form 8-K and other SEC rules and regulations. The C&DIs are presented in question and answer (Q&A) format and provide examples of what the SEC staff believe to be the appropriate or inappropriate use and/or presentation of a non-GAAP financial measure.

The C&DIs are reproduced in [Appendix 4](#) and the specific views and examples are discussed in the relevant topics in [chapters 4](#) to [6](#).

Question 3.2.60 Are the C&DIs authoritative?

Interpretive response: No.

The C&DIs are not in themselves rules, regulations or statements of the SEC. The Commission has neither approved nor disapproved of these interpretations; they are positions of the SEC staff.

Further, the C&DIs do not necessarily discuss all material considerations necessary to reach the conclusions stated, and they are not binding because of their informal nature; they are intended as general guidance and should not be considered definitive. However, the SEC staff will often refer a registrant

directly to a particular C&DI when they believe the presentation of a non-GAAP measure does not comply with the rules.

3.3 Exemptions

This section explains several situations in which registrants are exempt from applying certain requirements of Reg G and/or Reg S-K Item 10(e).

3.3.10 Registered investment companies

A registered investment company is an entity registered under Section 8 of the Investment Company Act of 1940 (1940 Act). The 1940 Act provides special reporting requirements and exemptions that are specific to registered investment companies. For example, registered investment companies are not required to provide executive compensation disclosures or MD&A, or to comply with Section 404 of the Sarbanes-Oxley Act.

Question 3.3.10 Are investment companies exempt from the SEC's non-GAAP rules?

Interpretive response: It depends.

Registered investment companies are exempt from any rules adopted by the SEC under the Sarbanes-Oxley Act. This means registered investment companies are excluded from the definition of 'registrant' for purposes of Regs G and S-K Item 10(e). [FR-65.II.A.1.a]

In contrast, Regs G and S-K Item 10(e) apply to investment companies that do not qualify as registered investment companies under the 1940 Act (e.g. business development companies, certain real estate investment funds). [S-X Art 6]

3.3.20 Proposed business combinations

Companies contemplating a business combination are often required to file their public communications under SEC communications rules (see [Question 3.3.20](#)) that apply to business combination transactions. Such communications may include projections or forecasts of results and brief statements about the potential benefits to be achieved by the business combination – e.g. synergies, valuations, dividend amounts. Certain of these communications are exempt from the SEC non-GAAP rules.

Question 3.3.20 What are the specific exemptions from the SEC's non-GAAP rules for proposed business combinations?

Interpretive response: The following table summarizes the specific exemptions for proposed business combinations, making it clear that not all non-GAAP financial measures related to proposed business combinations are exempt from the SEC non-GAAP rules. [G Rule 100(d), S-K Item 10(e)(6), C&DI 101.01, 101.02, 101.03, 101.04, FR-65.I, FR-65.II.A.1.c]

Exempt	Not exempt
<p>Non-GAAP financial measures included in communications subject to the SEC's communication rules that apply under Rule 425 of the Securities Act, or Rules 14a-12, 14d-2(b)(2) or 14d-9(a)(2) of the Exchange Act to a proposed business combination.</p> <p>The exemption applies to the company resulting from the combination and the parties to the transaction.</p>	<p>Non-GAAP financial measures included in a communication under one of the proposed business combination rules (see left) that are also disclosed in a registration statement, a proxy statement or a tender offer statement.</p>
<p>Non-GAAP financial measures included in forecasts provided to a financial advisor – included in registration statements, proxy materials and tender offer statements – to the extent that:</p> <ul style="list-style-type: none"> • the financial measures are included in forecasts provided to the financial advisor for the purpose of rendering an opinion that is materially related to the business combination transaction; and • the forecasts are being disclosed to comply with Item 1015 of Reg M-A. <p>This includes information disclosed in a Form S-4 to register shares to be issued in a business combination or in a proxy statement to comply with Item 1015 of Reg M-A – e.g. information provided in a report, opinion or appraisal used to support the fairness of the consideration issued in the transaction.</p>	<p>Non-GAAP financial measures included in forecasts disclosed in a registration statement or proxy statement related to a business combination that are not required by Item 1015 of Reg M-A.</p>
<p>Non-GAAP financial measures included in forecasts provided to parties (e.g. bidders) involved in a business combination transaction, if determined by the company to be material to the users and required to be disclosed to comply with anti-fraud and other liability provisions of the applicable federal securities laws.</p>	<p>Non-GAAP financial measures included in a communication under the applicable federal securities laws (see left) that are also disclosed in a registration statement, a proxy statement or a tender offer statement.</p>

Exempt	Not exempt
Companies consult with securities counsel to determine whether forecasts need to be provided to external parties to comply with the anti-fraud and other liability provisions of the applicable federal securities laws.	

3.3.30 Compensation Discussion & Analysis (CD&A)

As part of the CD&A in its annual proxy statement, a registrant discloses the criteria used in reaching decisions for the compensation paid to its chief executive officer, chief financial officer and the three other most highly compensated executive officers. These criteria often include the registrant's use of corporate and individual performance targets (target levels), which may constitute non-GAAP financial measures. [CFR 229.402(b)]

A target level that is a non-GAAP financial measure provided under this requirement is not subject to Regs G and S-K Item 10(e). However, a registrant must disclose how the target level non-GAAP financial measure is calculated from its audited financial statements. [CFR 229.402(b) (Instr 5)]

Question 3.3.30 Is the CD&A exemption limited to non-GAAP financial measures that relate to the disclosure of target levels?

Interpretive response: Yes. The CD&A exemption does not extend to non-GAAP financial measures that do not relate to the disclosure of target levels, but are nevertheless included in CD&A or other parts of the proxy statement. Non-GAAP financial measures presented for any other purpose are subject to Regs G and S-K Item 10(e). [C&DI 118.08]

However, the SEC staff will not object to presenting a non-GAAP financial measure in the CD&A to explain the relationship between pay and performance or to justify certain amounts of pay if the registrant includes a prominent reference to either: [C&DI 118.08]

- an annex to the proxy statement containing the GAAP reconciliation and other information required by the rules; or
- the pages in the Form 10-K containing the required GAAP reconciliation and other information, provided the Form 10-K is incorporating by reference the proxy statement's Item 402 disclosure as part of its Part III information.

Question 3.3.40 Does the CD&A exemption apply to the company-selected measure required to be disclosed under the pay vs performance disclosure rules?

Background: Reg S-K Item 402(v) requires a registrant to disclose the relationship between executive compensation and certain measures of financial performance of the registrant for the five most recent fiscal years, including a company-selected measure.

The required company-selected measure is the most important financial performance measure that is used to link compensation actually paid to executives to company performance for the most recently completed fiscal year. [S-K Item 402(v)(2)(vi)]

Interpretive response: Yes. This company-selected measure may represent a non-GAAP financial measure, but a non-GAAP financial measure presented for this purpose is not subject to the requirements of Regs G and S-K Item 10(e) (i.e. the general rules regarding disclosure of non-GAAP financial measures) because it is required to be disclosed under Item 402(v). However, Item 402(v) requires the company-selected measure to be accompanied by disclosure of how it is calculated from the company's audited financial statements. The SEC staff will likely object to referencing another filing to satisfy this disclosure requirement. [S-K Item 402(v)(2)(vi)]

Example SEC comment

The following is an SEC comment sent to a registrant after SEC staff reviewed the definitive proxy statement.

We note that you have included EBITDA as a percentage of Revenues, a non-GAAP measure, as your Company-Selected Measure pursuant to Regulation S-K Item 402(v)(2)(vi). Please provide disclosure showing how this number is calculated from your audited financial statements, as required by Regulation S-K Item 402(v)(2)(vi). We note your reference in footnote (7) to further discussion in the Compensation Discussion and Analysis, but we are unable to locate disclosure showing how your Company-Selected Measure is derived from the audited financial statements. If the required disclosure appears in a different part of the definitive proxy statement, you may satisfy the disclosure requirement by a cross-reference thereto; however, incorporation by reference to a separate filing will not satisfy this disclosure requirement.

3.3.40 Free writing prospectus

A free writing prospectus is a type of communication that: [FR-75, C&DI 102.08]

- represents an offer to sell or a solicitation of an offer to buy securities that is or will be the subject of a registration statement; and
- does not otherwise satisfy the statutory prospectus requirements under the securities laws.

Question 3.3.50 Do the SEC's non-GAAP rules apply to a free writing prospectus?

Interpretive response: It depends.

Applicability of Reg G

How Reg G applies to a free writing prospectus depends on the Exchange Act reporting status of the company; it does not depend on the nature of the communication in which a non-GAAP financial measure is included. Therefore, if the company is required to file Exchange Act reports, Reg G applies to that company's free writing prospectus.

Applicability of Reg S-K Item 10(e)

Reg S-K Item 10(e) applies to registration statements under the Securities Act and to registration statements and other documents filed under the Exchange Act. However, a company is not required to file a free writing prospectus as part of its registration statement or otherwise include it (or incorporate it by reference) in a registration statement. Therefore, S-K Item 10(e) does not apply to a free writing prospectus that a company does not file or include or incorporate by reference into a registration statement, or does not include in an Exchange Act report (e.g. Form 8-K). If the free writing prospectus is included or incorporated in a registration statement or in an Exchange Act report, it is subject to the provisions of S-K Item 10(e). [\[C&DI 102.08\]](#)

3.3.50 Webcasts and other nonwritten communications

Many registrants conduct quarterly earnings calls, mostly by webcast, to announce earnings and communicate performance to the public or address these topics through other nonwritten communications shortly after they issue an earnings release. An exemption is provided for furnishing an Item 2.02 Form 8-K for such nonwritten communications (i.e. orally, telephonically, by broadcast, social media or other similar means) if certain conditions are met. However, Reg G still applies to those communications.

Further, members of the SEC staff may listen to earnings and analyst calls during their filing reviews to learn about a registrant and may raise questions to the registrant regarding non-GAAP financial measures being discussed on the calls.

Question 3.3.60 How does Reg G apply to webcasts and other nonwritten communications?

Interpretive response: The disclosure provisions of Reg G are met for such communications if: [\[G Rule 100 \(N1\)\]](#)

- the required Reg G disclosures are provided on the registrant's website at the time the non-GAAP financial measure is made public; and

- the website location (i.e. address) is made public in the same presentation in which the non-GAAP financial measure is made public.

The SEC encourages registrants to provide ongoing access to this information, and suggests that the information be available for at least 12 months. [FR-65.FN28]

Question 3.3.70 What are the conditions for obtaining an exemption to furnishing Item 2.02 Form 8-K for earnings calls and other nonwritten communications?

Interpretive response: An earnings release is typically furnished in an Item 2.02 Form 8-K. Item 2.02 exempts information discussed on a subsequent earnings call from the Form 8-K filing requirement if certain conditions are met. [Form 8-K Item 2.02(b)]

For webcasts or other nonwritten communication, an audio file, slides or similar presentation materials may satisfy the exemption conditions if the file or materials: [C&DI 105.01]

- are provided as part of a presentation that is complementary to, and initially occurs within 48 hours of, a related written announcement or release that has been furnished on an Item 2.02 Form 8-K;
 - contain all material financial and other statistical information included in the presentation that was not previously disclosed;
 - provide any information that would be required by Reg G (see [Question 3.3.60](#)); and
 - provide investors access to the file or materials through the registrant's website.
-

Question 3.3.80 Can the exemption apply when a quarterly earnings release is attached as an exhibit to Form 10-Q?

Interpretive response: Yes. The filing of a quarterly earnings release as an exhibit to the Form 10-Q, rather than in an Item 2.02 Form 8-K, would not preclude reliance on the exemption for the webcast or other nonwritten communication. [C&DI 105.05]

Question 3.3.90 Can the exemption apply to information disclosed during nonwritten communication that was not in the related written announcement or release?

Background: A registrant issues its earnings release after the close of the market and two hours later holds a properly noticed earnings conference call

during which it discusses material, previously undisclosed information. Because the market was closed, the registrant was unable to furnish its earnings release on a Form 8-K before its conference call and therefore could not rely on the exemption from the requirement to furnish the information in the conference call on a Form 8-K.

Interpretive response: Under this fact pattern, the exemption will apply if the registrant:

- furnishes the material, previously nonpublic, financial and other statistical information (including that provided in connection with any questions and answers) as an exhibit to a Form 8-K; and
- satisfies the other requirements of Item 2.02 of Form 8-K.

A transcript of the portion of the conference call or slides or a similar presentation including that information satisfies the first requirement. [C&DI 105.07]

Question 3.3.100 Can a registrant cure its failure to post information on its website about a non-GAAP financial measure disclosed in a nonwritten communication?

Interpretive response: Yes. Management may unexpectedly disclose a non-GAAP financial measure during an unscripted Q&A session that had not been posted along with the required Reg G disclosures in the presentation or on the registrant's website in advance. If that occurs, the required information must be posted on the registrant's website promptly after it is disclosed. A webcast of the oral presentation would be sufficient to meet this requirement provided it includes the required information. [C&DI 105.02]

Example SEC comment

The following is an SEC comment sent to a registrant after SEC staff listened to an earnings call.

In your Q3 earnings call, management indicates that 'free cash burn' for the quarter was about \$10 million, which appears to be a discussion of non-GAAP measures. In the future, where non-GAAP financial measures are made public orally, telephonically, by webcast, broadcast or similar means, please ensure that you include the most directly comparable GAAP financial measure as required by Item 100(a)(1) of Regulation G and provide a cross reference to the location on your website where the reconciliation for such measures can be found. We refer you to Note 1 to Item 100 of Regulation G and Question 105.02 of the C&DIs on Non-GAAP Financial Measures.

3.4 Legal considerations

Neither the compliance nor noncompliance with Reg G requirements, in itself, affects any person's liability under the anti-fraud provisions of the securities laws. However, the SEC has indicated that a disclosure under Reg G that is materially deficient may, in addition to violating Reg G, give rise to a violation of the anti-fraud provisions. The SEC has specifically noted that a non-GAAP financial measure that obscures a registrant's GAAP results may be misleading, which could violate the anti-fraud provisions. [G Rule 102, FR-65.II.A.4]

Question 3.4.10 How do the liability provisions in Section 18 of the Exchange Act interplay with the SEC's non-GAAP rules?

Background: Section 18 of the Exchange Act imposes liability for false and misleading statements in documents *filed* with the SEC.

Interpretive response: A registrant may *furnish* to the SEC an earnings release on Item 2.02 Form 8-K rather than *file* that information with the SEC. Furnishing information rather than filing the information has legal and other implications. Broadly speaking, an earnings release that is furnished is not considered filed for purposes of the liability provisions in Section 18 of the Exchange Act. Item 2.02 Form 8-K that are furnished, not filed, are not automatically incorporated by reference into a registration statement (e.g. Form S-3). Only information filed with the SEC is subject to Section 18 liability and would be automatically incorporated by reference into a registration statement.

A registrant should consult its legal counsel to understand the legal implications of presenting non-GAAP financial measures in public disclosures and filings with the SEC, the requirements for furnishing earnings releases in Item 2.02 Form-8-K, and the legal implications of furnishing versus filing information with the SEC.

Question 3.4.20 Does failure to include all information required by Reg G in an Item 2.02 Form 8-K affect the ability to use Form S-3 or to comply with Rule 144 of the Securities Act of 1933?

Background: Form S-3 is used to register securities offerings subsequent to an initial public offering.

Rule 144 provides a safe harbor exemption that allows the public resale of restricted and control securities without registration, provided certain conditions are met. One of the conditions (which is contained in Rule 144(c)) is that adequate current public information regarding the securities' issuer be available, with specific requirements outlining when this condition is met.

Interpretive response: No. Failure to include all information required by Reg G does not affect Form S-3 eligibility under the Securities Act. Similarly, such

failure does not affect whether adequate current public information exists about the registrant for purposes of Rule 144(c) of the Securities Act. However, a registrant should consult its legal counsel to determine the implications of a failure to include all of the information required by Reg G. [\[FR-65.FN25, C&DI 105.03\]](#)

4. General requirements

Detailed contents

4.1 How the SEC Rules work

4.2 Not misleading

Questions

Question 4.2.10 Generally, how does a registrant determine whether a non-GAAP financial measure is misleading?

Question 4.2.20 Is a performance measure misleading if it excludes normal, recurring cash operating expenses necessary to operate a business?

Question 4.2.30 Can a non-GAAP financial measure be misleading if it is presented inconsistently among periods?

Question 4.2.40 Can a non-GAAP financial measure be misleading if it excludes only losses or expenses and not similar gains or income?

Question 4.2.50 Can a non-GAAP financial measure be misleading if it substitutes an individually tailored accounting principle for GAAP?

Question 4.2.60 Can detailed disclosure prevent a non-GAAP financial measure from being misleading?

Examples

Example 4.2.10 Infrequently occurring expense

Example 4.2.20 Non-GAAP financial measure that excludes rent expense

Example 4.2.30 Timing of expense recognition

4.3 Presentation of most directly comparable GAAP measure

4.3.10 Overview

4.3.20 Corresponding prior-year information

Questions

Question 4.3.10 How does a registrant identify the most directly comparable GAAP measure?

Question 4.3.20 How does a registrant determine whether a non-GAAP financial measure is a performance or liquidity measure?

Question 4.3.30 Can a registrant classify a non-GAAP financial measure as both a performance and liquidity measure?

Question 4.3.40 Are there other considerations for presenting liquidity non-GAAP financial measures?

Question 4.3.50 What considerations are important when determining whether to present corresponding prior-year information?

Example

Example 4.3.10 Adjusted free cash flow liquidity measure

4.4 Reconciliation from directly comparable GAAP measure

4.4.10 Overview

4.4.20 Unreasonable efforts exception for forward-looking non-GAAP financial measures

4.4.30 Labeling reconciling items

4.4.40 Most directly comparable GAAP measure is a pro forma measure

Questions

Question 4.4.10 What is the appropriate format for a reconciliation?

Question 4.4.20 What type of reconciliation is required when presenting a non-GAAP 'margin-type' financial measure?

Question 4.4.30 What type of reconciliation is required when an oil or gas registrant presents PV-10 as a non-GAAP financial measure?

Question 4.4.40 What disclosures are required when the unreasonable efforts exception is invoked?

Question 4.4.50 What are the requirements for labeling reconciling items?

Question 4.4.60 What are the requirements for labeling a reconciling item as nonrecurring, infrequent or unusual?

Example

Example 4.4.10 Unreasonable efforts exception sample disclosure

4.5 Equal or greater prominence requirement

4.5.10 Prominence – Scope

4.5.20 Prominence – Presenting the reconciliation

4.5.30 Non-GAAP income statement

4.5.40 Repeated disclosure

Questions

Question 4.5.10 Can the order in which a GAAP and non-GAAP financial measure appear violate the prominence requirement?

Question 4.5.20 Can the style of a presentation violate the prominence requirement?

Question 4.5.30 Does a GAAP measure need to be presented with at least a similar degree of discussion and analysis as a non-GAAP financial measure?

Question 4.5.40 What are some presentations of reconciliations the SEC staff believe violate the prominence requirement?

Question 4.5.50 What is considered a non-GAAP income statement?

Question 4.5.60 Must required reconciliations and disclosure information be presented everywhere that a non-GAAP financial measure appears in a filing or other document?

4.6 Required statements

Questions

Question 4.6.10 What type of information should the required statements contain?

Question 4.6.20 Must the required statements appear in every SEC filing subject to Reg S-K?

4.7 Prohibitions

4.7.10 Prohibition against excluding items that require cash settlement from liquidity measures

4.7.20 Prohibition against adjustments to GAAP earnings for nonrecurring, infrequent or unusual items

4.7.30 Prohibition against placing non-GAAP financial measures in financial statements

4.7.40 Prohibition against using titles or descriptions that are the same or similar to GAAP measures

4.7.50 Prohibition against presenting per-share liquidity measures

Questions

Question 4.7.10 What does the term 'reasonably likely' mean?

Question 4.7.20 What constitutes a similar charge or gain?

Question 4.7.30 Does the prohibition against eliminating or smoothing items apply only when items are labeled as nonrecurring, infrequent or unusual?

Question 4.7.40 When might a title or description be prohibited under Reg S-K?

Question 4.7.50 What are some examples of labels or descriptions that could be misleading?

Question 4.7.60 Are per-share measures of performance prohibited?

Example

Example 4.7.10 Excluding acquisition-related expenses

4.1 How the SEC Rules work

The SEC staff have consistently emphasized that evaluating the appropriateness of a non-GAAP financial measure requires careful consideration of the specific facts and circumstances. In addition, use of a non-GAAP financial measure by one registrant does not necessarily mean it is appropriate for all registrants to make similar disclosures because the focus should be on why the measure is useful for a particular registrant’s investors.

The SEC staff continue to reiterate the same themes found in complying with the non-GAAP rules: [\[2024 AICPA Conf\]](#)

- the prominence principle requires disclosure of a comparable GAAP measure with equal or greater prominence and applies wherever a non-GAAP measure appears in a filing (absent GAAP requirements);
- the labeling principle requires appropriate description of the label and clear explanation of the non-GAAP adjustments made to a measure; and,
- registrants should continue to consider whether a non-GAAP measure is misleading or a tailored accounting principle – especially when introducing a new measure or revising a previously disclosed measure.

The following table summarizes the requirements related to the use of non-GAAP financial measures in SEC filings.

Disclosure requirements/ prohibitions	Public disclosures: Reg G	Filings: Reg S-K Item 10(e)	In an Item 2.02 Form 8-K	
			Furnished to the SEC	Filed with the SEC
Non-GAAP financial measure cannot be misleading (see section 4.2)	✓	✓	✓	✓
Presentation of most directly comparable GAAP measure is required (see section 4.3)	✓	✓	✓	✓
Reconciliation from most directly comparable GAAP measure is required (see section 4.4)	✓	✓	✓	✓
Presentation cannot be more prominent than the most directly comparable GAAP measure (see section 4.5)		✓	✓	✓
Statement disclosing reasons management believes the measure is useful to investors is required (see section 4.6)		✓	✓	✓

Disclosure requirements/ prohibitions	Public disclosures: Reg G	Filings: Reg S-K Item 10(e)	In an Item 2.02 Form 8-K	
			Furnished to the SEC	Filed with the SEC
Statement disclosing any additional purpose, to the extent material, for which management uses the measure is required (see section 4.6)		✓	✓	✓
Excluding items that require cash settlement from a liquidity measure is prohibited (see section 4.7.10)		✓		✓
Adjustments to GAAP earnings for nonrecurring, infrequent or unusual items is prohibited (see section 4.7.20)		✓		✓
Prohibitions exist related to placement of non-GAAP financial measures (see section 4.7.30)		✓		✓
Use of misleading titles or descriptions is prohibited (see section 4.7.40)		✓		✓

4.2 Not misleading

The overarching principle under both Regs G and S-K Item 10(e) is that a non-GAAP financial measure cannot be misleading. A non-GAAP financial measure is considered misleading when, taken together with the information or discussion accompanying that measure, and in light of the circumstances under which it is presented, it contains an untrue statement of a material fact or omits to state a material fact. [G Rule 100(b), FR-65.FN38]

The SEC staff have continued to communicate their focus on misleading non-GAAP financial measures and related disclosures at conferences and in other forums. This focus has been reinforced by a continued high volume of comment letters issued to registrants regarding the potentially misleading nature of their non-GAAP financial measures and disclosures. The staff continue to object to non-GAAP measures they deem misleading, regardless of management's internal use or perceived investor and analyst demand. Therefore, the staff will not accept an argument that a measure is not misleading simply because it is disclosed to meet investor expectations. [2025 AICPA Conf]

Additionally, in recent years, there have been SEC enforcement cases related to non-GAAP financial measures. When the staff object to such a measure, the expectation is for its immediate removal from all future disclosures, including for comparative prior periods. However, the staff have indicated that if immediate removal or revision is overly burdensome or impracticable, companies are advised to contact their SEC filing review team. [2025 AICPA Conf]

Question 4.2.10 Generally, how does a registrant determine whether a non-GAAP financial measure is misleading?

Interpretive response: Whether a non-GAAP financial measure is misleading depends on the facts and circumstances. A registrant should evaluate its non-GAAP financial measures in light of the C&DIs, public comment letters on non-GAAP financial measures, and SEC speeches to determine whether it may be presenting a misleading picture of historical and future financial performance, financial position and/or cash flows.

The determination of whether a measure is misleading is based on the measure taken together with the disclosure provided. Robust and transparent disclosure can often clarify the nature of a non-GAAP measure and its utility for investors, potentially mitigating concerns that the measure is misleading on its face. However, there are circumstances where a measure is considered so misleading that no amount of disclosure can cure the deficiency (see [Question 4.2.60](#)).

Example of a measure that is commonly misleading

A non-GAAP performance measure that has the effect of presenting non-GAAP net income when the registrant incurred a GAAP net loss may be misleading. As shown in the illustrative enforcement actions in [section 4.2](#), the SEC's

Enforcement Division has previously investigated registrants that appeared to be circumventing the non-GAAP rules to inflate non-GAAP earnings over GAAP earnings. Therefore, registrants should be cautious when non-GAAP earnings are greater than GAAP earnings. Even if they believe they are complying with the non-GAAP rules, investors may still be misled depending on the facts and circumstances as well as the completeness and clarity of the supporting disclosures.

Question 4.2.20 Is a performance measure misleading if it excludes normal, recurring cash operating expenses necessary to operate a business?

Interpretive response: It depends. While not specifically prohibited, a performance measure may be considered misleading if it excludes *normal, recurring* cash operating expenses necessary to operate a business.

What is considered ‘normal’ and ‘recurring’?

The SEC staff’s view is that what constitutes a normal recurring operating expense may vary based on a registrant’s unique facts and circumstances. [C&D 100.01]

Normal	Consider the nature and effect of the non-GAAP adjustment within the context of the registrant’s individual operations, revenue generating activities, business strategy, industry and regulatory environment.
Recurring	An expense that occurs repeatedly or occasionally, including at irregular or infrequent intervals.

Similarly, the determination of whether an adjustment relates to a normal, recurring expense should be in the context of the registrant’s operations, business strategy, and industry environment.

Example 4.2.10 Infrequently occurring expense

ABC Corp, a pharmaceutical company, presents non-GAAP R&D expenses in its MD&A. These expenses are considered non-GAAP because ABC excludes significant upfront payments and premiums it paid to enter into collaboration and licensing arrangements. These payments compensated collaboration partners and investees for R&D activities they performed prior to the arrangements.

ABC excludes these payments and premiums from its non-GAAP R&D expenses because they are paid infrequently and management views them as distinct from other R&D expenses.

SEC staff’s view

Although registrants may have incurred such expenses infrequently or at less predictable intervals, and management may view the payments as distinct from other R&D expenses, the SEC staff have objected to these adjustments and

required registrants with similar fact patterns to no longer make such adjustments to arrive at their non-GAAP financial measures.

The following is the text of a relevant SEC comment.

We note that you have excluded upfront payments and premiums paid for the acquisition of related common stock to arrive at non-GAAP R&D expense and non-GAAP net income. In this regard, you state in Note X that in connection with your business strategy, you enter into these collaboration agreements, which are detailed as part of your key business developments on page X of your Form 10-K. We believe that your adjustments to exclude the upfront and premium payments made for collaboration agreements from R&D expense and net income are inconsistent with the guidance in Question 100.01 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations

Example 4.2.20 Non-GAAP financial measure that excludes rent expense

ABC Corp, a real estate company, adds back rent expense to operating income and presents this performance measure in its MD&A. This non-GAAP financial measure would be considered misleading if the rent expense is considered a normal, recurring, cash operating expense necessary to operate ABC's business.

The same result could occur if, instead of operating income, ABC presents a different performance measure such as EBITDA (e.g. EBITDAR) with rent expense added back.

Example SEC comments

Comment 1: SEC staff object to excluding rent expense and store closing costs

You disclose 'operating income, excluding certain items', which excludes store closing and other costs; and disclose 'adjusted operating income' in your 'return on invested capital' calculation, which adds back rent expense. It appears that store closing and other costs and rent expense may be normal, recurring, cash operating expenses necessary to operate your business; therefore, your disclosures may be inconsistent with Question 100.01 of the updated C&DIs on Non-GAAP Financial Measures.

Comment 2: SEC staff object to excluding restructuring program costs, integration of acquisition costs and legal settlement costs

We note that you exclude nonrecurring restructuring program costs, integration of acquisitions costs, and legal settlement costs from your adjusted non-GAAP income measure. Please explain to us why these are not normal, recurring, cash operating expenses necessary to operate your business. In your response, please tell us the significant components of

each of the expenses for each of the last three years and the latest interim period with comparable amounts for the 20X1 interim period.

Question 4.2.30 Can a non-GAAP financial measure be misleading if it is presented inconsistently among periods?

Interpretive response: Yes. A non-GAAP financial measure can be misleading if not presented consistently among periods. A measure that adjusts a specific charge or gain in the current period but did not adjust other, similar charges or gains in prior periods could violate SEC rules unless (1) the change is disclosed, and (2) the reasons for the change are stated. Further, to place this disclosure in the appropriate context, the prior measures might need to be recast to conform to the current presentation. Such recasting would depend on the significance of the change in the measure. [C&DI 100.02]

Example SEC comment

The following is an SEC comment regarding inconsistent presentation between periods.

We note that you disclose non-GAAP financial measures that adjust your cost of material sales, operating expenses, operating income, income before income taxes, net income and net income per common share information to remove the impact of an inventory writedown during 20X2. From your disclosures we note that you had inventory writedowns in both 20X2 and 20X1 but you chose to remove the impact of the inventory writedown and related tax effect in the non-GAAP measures for 20X2 only and did not include similar non-GAAP disclosures that reflected the impact of inventory writedowns in 20X1. Accordingly, your 20X2 non-GAAP measures may be inconsistent with the updated CD&Is on Non-GAAP Financial Measures.

Example SEC enforcement action

The following pertains to an SEC enforcement action related to inconsistent presentation between periods.

The Enforcement Division announced a settlement with a registrant for the inconsistent presentation over prior periods of a non-GAAP financial measure called 'organic revenue growth'. Organic revenue growth represented the company's growth in revenue excluding the effects of two reconciling items: acquisitions and foreign exchange effects. However, in a prior period, the company began incorporating a third reconciling item into its calculation without informing investors of the change, which resulted in higher organic revenue growth results. The company also failed to give GAAP metrics equal or greater prominence to non-GAAP metrics in its earnings releases (see [section 4.5](#) for the prominence requirement). The

company ultimately agreed to pay a penalty to settle charges for violating the rules.

Question 4.2.40 Can a non-GAAP financial measure be misleading if it excludes only losses or expenses and not similar gains or income?

Interpretive response: Yes. A non-GAAP financial measure can be misleading if it excludes only losses or expenses, but not similar gains or income.

An example is a registrant adding back losses associated with litigation settlements to net income but not removing gains associated with litigation claims. This may be considered misleading because the litigation claims could be considered similar in nature to the litigation settlements. [\[C&DI 100.03\]](#)

Example SEC comment

The following is an SEC comment regarding excluding items.

We note that nearly all adjustments made to reconcile EBITDA to Adjusted EBITDA represent increases to EBITDA. It also appears that you adjust for all noncash items presented on your statements of cash flows except for gains and losses on disposals of fixed assets and amortization of deferred gains on sale-leasebacks, which, if included, would have decreased Adjusted EBITDA for the periods presented. Please address how your presentation complies with the updated CD&Is on Non-GAAP Financial Measures.

Example SEC enforcement action

The following pertains to an SEC enforcement action.

The Enforcement Division announced a settlement with a registrant for false and misleading disclosures concerning how it calculated a key non-GAAP financial measure. The calculation of the non-GAAP financial measure excluded certain expenses while including the related tax benefit on those expenses, resulting in an inflation of the non-GAAP financial measure of up to 30% in one of the impacted periods. The company ultimately agreed to pay a penalty to settle charges for violating the rules.

Question 4.2.50 Can a non-GAAP financial measure be misleading if it substitutes an individually tailored accounting principle for GAAP?

Interpretive response: Yes, a non-GAAP financial measure that substitutes an individually tailored accounting principle (e.g. recognition or measurement) for GAAP could be misleading.

An example is when a registrant uses a non-GAAP performance measure to adjust revenue to recognize it as billed rather than recognizing it over time as it is earned under GAAP. The same principle applies to other individually tailored recognition and measurement methods. [\[C&DI 100.04\]](#)

In recent years, the SEC staff have noted they continue to observe adjustments to GAAP amounts that result in non-GAAP financial measures that include individually tailored accounting principles. The staff believe many registrants misinterpreted the prohibition on such adjustments to apply only to tailored revenue recognition policies. [\[Regs Comm 09/2019, 2022 AICPA Conf\]](#)

In December 2022, the SEC staff revised C&DI 100.04 to be clear that it applies to any tailored accounting principle and to provide additional examples of what would be considered prohibited. These examples include:

- changing the pattern of recognition, such as including an adjustment in a non-GAAP performance measure to accelerate revenue recognized ratably over time in accordance with GAAP as though revenue was earned when customers were billed;
- presenting a non-GAAP measure of revenue that deducts transaction costs as if the registrant acted as an agent in the transaction, when gross presentation as a principal is required by GAAP, or the inverse, presenting a measure of revenue on a gross basis when net presentation is required by GAAP; and
- changing the basis of accounting for expenses (or revenue) in a non-GAAP performance measure to a cash basis, when an accrual basis is required by GAAP.

Another area of frequent SEC staff comment is presentation of non-GAAP financial performance measures that exclude amortization of acquired intangible assets without adjusting for the revenue related to those intangible assets. The SEC staff frequently request that registrants disclose that the associated revenue has not been adjusted.

Adoption of new accounting standards

The SEC staff have observed that the adoption of new accounting standards can raise questions about the potential for new non-GAAP financial measures. For example:

- the SEC staff have commented that it will not object to additional measures of profit or loss in the notes to the financial statements that are not calculated in accordance with GAAP as long as the registrant complies with both the provisions of Topic 280 (segment reporting) as well as the SEC's non-GAAP rules. [\[2024 AICPA Conf\]](#)

- the SEC staff have commented that companies should not adjust non-GAAP performance measures for the effect of Topic 326 (credit losses) (also known as the CECL accounting standard). [[Regs Comm 09/2019](#)]
-

Example SEC comments

The following are SEC comments regarding use of tailored accounting principles.

Comment 1

We note that you adjust your non-GAAP financial measures to add back the deferred revenue and related costs for products sold with resale value guarantees and where you collected the purchase price in cash, which substitutes an individually tailored measurement method for those of GAAP. Please describe the changes you expect to make to your presentation in light of the new guidance in Question 100.04 of the updated C&DIs on Non-GAAP Financial Measures.

Comment 2

We note you include adjustments in arriving at net operating profit after taxes that appear to remove your operating lease rent expense under GAAP and replace it with estimated depreciation and include lease adjustments in arriving at average invested capital. As this appears to be an individually tailored revenue recognition measurement method, please remove from your filing or advise. Refer to Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations.

Comment 3

We note your non-GAAP measures exclude the results of the divested ABC business. As these divested operations did not meet the criteria for being presented as discontinued operations pursuant to ASC 205-20, your non-GAAP measures appear to substitute individually tailored recognition and measurement methods for those of GAAP. Please revise to remove these adjustments from each measure. Refer to Question 100.04 of the Non-GAAP C&DIs.

Example 4.2.30 Timing of expense recognition

ABC Corp, a franchisor of retail outlets, manages and consolidates a cooperative advertising fund. As part of the franchise agreement, the franchisees remit 3% of their franchise locations' revenues to the advertising fund (the advertising contributions). ABC is required to spend 100% of the advertising contributions on advertising for the franchise system. The arrangement is such that the franchisor does not earn any margin on this activity; instead, the entire amount committed is contractually required to be spent on advertising costs.

ABC records advertising contributions as advertising revenues under Topic 606 and records advertising expense under Subtopic 720-35 resulting in the following accounting.

Plan funding status	GAAP expense recognition
Over-funded – cumulative advertising contributions exceed cumulative advertising expense	ABC recognizes advertising expense when the related revenues are recognized
Under-funded – cumulative advertising contributions are less than cumulative advertising expense	ABC recognizes advertising expense as incurred

Because the advertising fund operates in an under-funded status in some periods, the timing of recognizing the advertising revenues and expenses does not always match, which results in variability in net income from one period to another.

ABC is considering presenting an adjustment in its non-GAAP financial measure of income to align this timing of recognition (i.e. matching the revenues and expenses regardless of the plan funding status) and eliminate the effect on net income in any given period.

This proposed non-GAAP financial measure is not appropriate because the adjusted timing of recognition of advertising expense would represent a tailored accounting principle and therefore could be misleading to investors.

Question 4.2.60 Can detailed disclosure prevent a non-GAAP financial measure from being misleading?

Interpretive response: Not always. Certain non-GAAP financial measures may be misleading to such an extent that even the inclusion of detailed disclosures about the nature and effect of the non-GAAP financial measure and/or the underlying adjustments would not prevent the measure from being materially misleading. [C&DI 100.06]

4.3 Presentation of most directly comparable GAAP measure

4.3.10 Overview

For each non-GAAP financial measure, Regs G and S-K Item 10(e) require the presentation of the most directly comparable financial measure calculated and presented in accordance with GAAP. The requirement applies to both historical and forward-looking non-GAAP financial measures. [G Rule 100(a)(2), S-K Item 10(e)(1)(i)(A)]

In principle, the SEC believes that registrants should have flexibility in determining which GAAP measure is most directly comparable to the non-GAAP financial measure. However, the SEC staff have stated their expectations

related to the GAAP measures against which non-GAAP financial measures should be balanced, as this section explains. [FR-65.FN26]

Question 4.3.10 How does a registrant identify the most directly comparable GAAP measure?

Interpretive response: To identify the most directly comparable GAAP measure, a registrant first determines the purpose of the non-GAAP financial measure – i.e. whether it is intended to be used as a measure of the registrant’s liquidity or performance. The measure’s purpose will indicate where the directly comparable GAAP measure is located in the financial statements – i.e. income statement or statement of cash flows.

For GAAP purposes, investors of the financial statements will rely on the income statement for information about the registrant’s performance and the statement of cash flows for information about the registrant’s liquidity. Therefore, a non-GAAP financial measure that is a performance measure should generally be reconciled to a line item in the registrant’s income statement while a non-GAAP financial measure that is a liquidity measure should generally be reconciled to a line item in the registrant’s statement of cash flows. The SEC has expressed the following views on the most directly comparable GAAP measure for each type of non-GAAP financial measure. [FR-65.FN26]

Non-GAAP financial measure	The most directly comparable GAAP measure
Liquidity measures – i.e. that measure cash or funds generated from operations	Amounts from the statement of cash flows – i.e. cash flows from operating, investing or financing activities
Performance measures	Net income or income from continuing operations – taken from the income statement

Question 4.3.20 How does a registrant determine whether a non-GAAP financial measure is a performance or liquidity measure?

Interpretive response: The purpose of a non-GAAP financial measure is based on the substance and context of the reconciling adjustments to the directly comparable GAAP measure. For example, the SEC may challenge a non-GAAP financial measure that is reconciled to net income as being a performance measure if a majority of the reconciling adjustments are derived from the statement of cash flows.

Where and how a measure is disclosed and described can also affect its classification. For example, a registrant that presents a performance measure may have that classification challenged if it describes the measure as a measure of its ability to generate cash to pay down debt, because a registrant’s ability to generate cash is generally considered to be a measure of liquidity.

Example SEC comment

The following is an SEC comment regarding presenting the most directly comparable GAAP measure.

You present the non-GAAP measure Cash Available for Dividends, which is reconciled to net income. However, Cash Available for Dividends is defined in your Form 10-K as cash from operating activities plus cash distributions received from your interests in LP A and LP B, less cash interest expense, cash paid for income taxes, maintenance capital expenditures, and any cash reserves established by management. As Cash Available for Dividends appears to be a liquidity measure, explain why you believe it is appropriate to reconcile it to net income.

Question 4.3.30 Can a registrant classify a non-GAAP financial measure as both a performance and liquidity measure?

Interpretive response: Yes. Management may determine that a non-GAAP financial measure is both a performance and liquidity measure. In that case, the most directly comparable GAAP measure to the non-GAAP financial measure as both a performance and liquidity measure should be disclosed. Additionally, management should describe why it believes the dual classification is useful to investors.

Question 4.3.40 Are there other considerations for presenting liquidity non-GAAP financial measures?

Interpretive response: Yes. All three major categories in the statement of cash flows should be presented with equal or greater prominence than the liquidity measure (i.e. cash flows from operating, investing and financing activities). [FR-65.II.B.2, C&DI 102.06]

Example 4.3.10 Adjusted free cash flow liquidity measure

ABC Corp presents the following GAAP cash flow information in its statement of cash flows, and discloses this summarized financial information in MD&A.

Category	Amount
Net cash provided by operating activities	1,200
Net cash used in investing activities	(600)
Net cash used in financing activities	(300)

In MD&A (below its disclosure of the above summarized cash flow information), ABC presents the following reconciliation to its liquidity measure of adjusted free cash flow.

Category	Amount
Net cash provided by operating activities	1,200
Add: Legal settlements	100
Less: Capital expenditures	(400)
Adjusted free cash flow (Non-GAAP)	900

ABC further describes that it believes its adjusted free cash flow measure provides useful information to investors because this measure can be used to gauge its ability to fund new investment opportunities after consideration of all actual cash payments related to its working capital activities and costs that are capital in nature.

Because ABC clearly discloses the three major GAAP cash flow categories first (prominently), transparently labels its adjusted free cash flow liquidity measure as non-GAAP and reconciles this non-GAAP liquidity measure to the most directly comparable GAAP measure, it complies with the SEC non-GAAP rules.

Note that presenting free cash flow is typically not prohibited under Reg S-K Item 10(e)(1)(ii). Deducting capital expenditures from net cash provided by operating activities to arrive at a free cash flow measure does not violate the prohibitions in Reg G or Reg S-K Item 10(e)(1)(ii). However, because 'free cash flow' does not have a standardized definition under GAAP and its title alone may not clearly describe how the measure is calculated, ABC must provide a clear description of the calculation methodology and explicitly describe how free cash flow is determined (e.g. net cash provided by operating activities less capex) and present a reconciliation to the most directly comparable GAAP measure. See [section 4.4](#).

4.3.20 Corresponding prior-year information

Although Reg G requires disclosure of the most directly comparable GAAP measure, it does not specify:

- whether a registrant must present corresponding prior-year information for comparison purposes; or
- whether or how long a registrant must continue to present a particular non-GAAP financial measure.

Question 4.3.50 What considerations are important when determining whether to present corresponding prior-year information?

Interpretive response: We believe management should consider whether excluding a comparable prior-period non-GAAP financial measure complies with

C&DI 100.02 about inconsistent presentation between periods. See [Question 4.2.30](#).

That C&DI also expresses the SEC staff's view that the need to recast a prior-period non-GAAP financial measure for a change in the current period depends on the significance of the change. This view suggests that management should consider whether it needs to include the same non-GAAP financial measure for the prior period to avoid misleading investors, and to place the disclosure in the appropriate context.

4.4 Reconciliation from directly comparable GAAP measure

4.4.10 Overview

Regs G and S-K Item 10(e) require the reconciliation of each non-GAAP financial measure from its most directly comparable GAAP measure calculated and presented in accordance with GAAP. The reconciling items should not be non-GAAP financial measures. [G Rule 100(a)(2), S-K Item 10(e)(1)(i)(B), 2018 AICPA Conf]

There is an 'unreasonable efforts' exception for forward-looking non-GAAP financial measures (see [section 4.4.20](#)).

Question 4.4.10 What is the appropriate format for a reconciliation?

Interpretive response: The reconciliation should generally be presented in a schedule format, beginning with the most directly comparable GAAP measure, with quantitative adjustments reconciling to the non-GAAP financial measure. Other reconciliation methods are allowed if they are clearly understandable, quantitative in nature, and begin with the directly comparable GAAP measure. [G Rule 100(a)(2), S-K Item 10(e)(1)(i)(A)]

The SEC staff have stated that the format of the reconciliation can itself result in undue prominence of the non-GAAP financial measure (see [Question 4.5.40](#)).

Question 4.4.20 What type of reconciliation is required when presenting a non-GAAP 'margin-type' financial measure?

Interpretive response: In 2019, the SEC staff observed an increase in the number of non-GAAP 'margin-type' financial measures (e.g. contribution margin). They emphasized that, depending on the facts and circumstances, the presentation of such measures is only acceptable if the registrant also discloses a reconciliation from gross margin (the most directly comparable GAAP financial measure), as defined in GAAP, to the non-GAAP financial measure, even if gross margin is not separately presented as a line item in the financial

statements. In 2025, the SEC staff observed for some industries where gross margin is not presented on the financial statements, registrants may reconcile to operating income. [Regs Comm 09/2019, 2019 AICPA Conf, 2025 SEC Speaks]

Question 4.4.30 What type of reconciliation is required when an oil or gas registrant presents PV-10 as a non-GAAP financial measure?

Background: A publicly traded company engaged in significant oil and gas producing activities must disclose, among other matters, a standardized measure of discounted future net cash flows relating to proved oil and gas reserve quantities in supplementary information accompanying its annual financial statements. [932-235-50-2]

Commonly, registrants engaged in oil and gas producing activities also present PV-10 in MD&A as a non-GAAP financial measure. PV-10 represents the present value of future net cash flows relating to proven oil and gas reserve quantities, without the effect of income taxes, discounted at 10%.

Interpretive response: The SEC staff commented that the most directly comparable GAAP measure to PV-10 is the standardized measure of discounted future net cash flows included in the required supplemental information. Therefore, when PV-10 is presented as a non-GAAP financial measure, it should be reconciled to this standardized measure.

Example SEC comment

The following is an SEC comment regarding presenting PV-10 as a non-GAAP financial measure.

Please revise your reconciliation of the non-GAAP measure PV-10 beginning on page 9 to begin with the Standardized Measure of Discounted Future Net Cash Flows, the most directly comparable GAAP measure. Your current presentation places greater prominence on the non-GAAP measure and is inconsistent with Question 102.10 of the Compliance and Disclosure Interpretations.

4.4.20 Unreasonable efforts exception for forward-looking non-GAAP financial measures

The reconciliation requirement applies to both historical and forward-looking non-GAAP financial measures. However, for forward-looking measures, the reconciliation need not be presented if the information needed to prepare the reconciliation is not available without unreasonable effort. [G Rule 100(a)(2), S-K Item 10(e)(i)(B)]

Question 4.4.40 What disclosures are required when the unreasonable efforts exception is invoked?

Interpretive response: If a registrant invokes the unreasonable efforts exception and therefore does not provide a reconciliation for a forward-looking non-GAAP financial measure, it discloses the following in a location of equal or greater prominence than the non-GAAP financial measure: [C&DI 102.10(b), FR-65.II.B.2, S-K Item 10(e)(1)(i)(B)]

- the fact that it is relying on the exception;
- the reconciling information that is available without unreasonable effort;
- the specific information that is unavailable; and
- the probable significance of the unavailable information.

Example 4.4.10 Unreasonable efforts exception sample disclosure

ABC Corp invokes the unreasonable efforts exception and as a result discloses the following in its SEC filing.

In reliance on the unreasonable efforts exception in Reg S-K Item 10(e)(1)(i)(B), a quantitative reconciliation from the most comparable GAAP measure is not provided for Adjusted EBITDA to Income from operations.

The Company cannot, without unreasonable effort, forecast certain items required to develop meaningful comparable GAAP financial measures. These items include business optimization, restructuring and stock compensation costs, foreign exchange rate changes, as well as other non-cash and unusual items and other adjustments as defined under the Company's debt agreements that are difficult to predict in advance to include in a GAAP estimate. This is due to the unpredictable and uncontrollable nature of these reconciling items, which would require an unreasonable effort to forecast, and we believe would result in a range of projected values so broad as to be meaningless to investors.

For these reasons, we believe that the probable significance of such information is low.

4.4.30 Labeling reconciling items

Question 4.4.50 What are the requirements for labeling reconciling items?

Interpretive response: Each item in the reconciliation of a non-GAAP financial measure from its directly comparable GAAP measure is labeled using terminology that clearly describes the nature and basis of the adjustment. Additional disclosure may be necessary to provide context for the reconciling item.

Examples of labeling that may require additional disclosure

- **Label implies the adjustment is broader or narrower than the actual adjustment.** Commonly labeled reconciling items like ‘acquisition-related’ or ‘restructuring-related items’ for example may be interpreted broadly and generally require additional disclosure, such as the significant components making up the reconciling item and/or additional commentary stating the reconciling item’s nature and purpose.
- **Label is general and non-descript.** A reconciling item with a general, non-descript label such as ‘other adjustments’ may be improperly labeled unless the registrant discloses what the adjustment comprises.

Additional disclosure may not be sufficient

As discussed in [Question 4.2.60](#), certain non-GAAP financial measures may be misleading to such an extent detailed disclosures about the nature and effect of the measures and/or the underlying adjustments would not prevent the measures from being materially misleading and in violation of Reg G. This principle needs to be considered when labeling reconciling items. [\[C&DI 100.06\]](#)

Example SEC comments

Comment 1: ‘Other’ label is general and non-descript

We note your non-GAAP measures Adjusted EBITDA and Management EBITDA both include an adjustment for ‘other’, which includes a number of items. Please address the following:

- provide us with further description and quantification for the adjustments underlying these amounts; and
- revise your disclosure to break out individually significant adjustments.

Comment 2: ‘Other’ label is general and non-descript

Please tell us what the ‘Other’ adjustments were for the periods ended December 31, 20X1 and December 31, 20X0 and explain why material items were not separately presented.

Question 4.4.60 What are the requirements for labeling a reconciling item as nonrecurring, infrequent or unusual?

Interpretive response: The SEC prohibits a non-GAAP performance measure from eliminating or smoothing items identified (i.e. labeled) as nonrecurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain in the prior two years. This two-year look-forward and look-back requirement applies only to those reconciling items that are labeled as nonrecurring, infrequent or unusual (see [section 4.7.20](#)). [\[S-K Item 10\(e\)\(1\)\(ii\)\(B\)\]](#)

Further, as discussed in [Question 4.2.20](#), the SEC staff clarified that an expense that occurs repeatedly, including at irregular or infrequent intervals, is considered recurring. [\[C&DI 100.01\]](#)

4.4.40 Most directly comparable GAAP measure is a pro forma measure

The most directly comparable measure may be a pro forma measure prepared and presented under Reg S-X Article 11 (or Rule 8-05 for smaller reporting companies). If a registrant presents a pro forma non-GAAP financial measure that includes adjustments related to a transaction, the required reconciliation should be to the pro forma financial measure calculated under GAAP that also includes those same transaction adjustments. Similarly, if the pro forma non-GAAP measure includes both transaction accounting adjustments and autonomous entity adjustments, as described in S-X Article 11-02, registrants should reconcile to the pro-forma measure that includes both sets of adjustments. Non-GAAP measures should not be reconciled to a total that includes management’s adjustments in the pro forma financial information. The use of the term ‘pro forma’ in a non-GAAP financial measure in any context other than Article 11 or Rule 8-05 is inappropriate (see [section 4.7.40](#)).[\[C&DI 101.05\]](#)

4.5 Equal or greater prominence requirement

Reg S-K Item 10(e) requires the presentation of a non-GAAP financial measure’s most directly comparable GAAP measure to be given equal or greater prominence than the non-GAAP financial measure itself. [\[S-K Item 10\(e\)\(1\)\(i\)\(A\)\]](#)

C&DI 102.10 provides interpretive guidance on the prominence requirement, including examples that clearly illustrate the types of non-GAAP financial measure disclosures the SEC staff believe would fail to meet the equal or greater prominence requirement. The C&DI is divided into three parts.

<p>Scope [C&DI 102.10(a)]</p>	<p>Addresses types of presentation schemes that can constitute undue prominence and provides specific examples. See section 4.4.10.</p>
<p>Reconciliation [C&DI 102.10(b)]</p>	<p>Provides examples of disclosures that would cause the non-GAAP reconciliation itself to give undue prominence to non-GAAP financial measures. See section 4.4.20.</p>
<p>Non-GAAP income statement [C&DI 102.10(b)(c)]</p>	<p>Explains the staff view that presentation of a non-GAAP income statement would give undue prominence to non-GAAP financial measures. See section 4.4.30.</p>

4.5.10 Prominence – Scope

The SEC staff have observed a variety of ways in which non-GAAP financial measures violate the prominence requirement. They also clarified that the prominence requirement applies to the presentation *and* any related discussion and analysis of non-GAAP financial measures. This section discusses instances in which the SEC staff consider a presentation to result in undue prominence. [C&DI 102.10]

Question 4.5.10 Can the order in which a GAAP and non-GAAP financial measure appear violate the prominence requirement?

Interpretive response: Yes. Presenting a non-GAAP financial measure before the most directly comparable GAAP measure (or omitting the comparable GAAP measure) would result in undue prominence being given to the non-GAAP financial measure. The GAAP measure must appear before the non-GAAP financial measure in all instances – e.g. headlines or captions, press releases, investor presentation. [C&DI 102.10(a)]

Example SEC comments

The following are SEC comments regarding the order of presenting GAAP and non-GAAP financial measures.

Comment 1: Presenting the non-GAAP financial measure before the GAAP measure

We refer to your presentation of adjusted EBITDA and non-GAAP diluted earnings per share in the headline of your earnings release. In future filings, please revise your disclosures to also present, with equal or greater prominence, the most directly comparable GAAP financial measures. See Item 10(e)(1)(i)(A) of Regulation S-K and Question 102.10(a) of the Division of Corporation Finance’s Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

Comment 2: Omitting the GAAP measure

We note you disclose the margin for Adjusted EBITDA. Please present with greater or equal prominence the comparable margin, net income/ (loss) margin, computed on a GAAP basis wherever this non-GAAP margin is presented. Refer to Item 10(e)(1)(i)(A) of Regulation S-K and Question 102.10(a) of the staff’s Compliance and Disclosure Interpretations ‘Non-GAAP Financial Measures’.

Question 4.5.20 Can the style of a presentation violate the prominence requirement?

Interpretive response: Yes. The style of presentation should not give the impression that the non-GAAP measure is emphasized over the comparable GAAP measure. [C&DI 102.10(a)]

For example, the following situations would result in undue prominence:

- using a style of presentation (e.g. bold, larger font) that emphasizes the non-GAAP financial measure over the comparable GAAP measure;
- describing a non-GAAP financial measure using phrases such as 'record performance' or 'exceptional' without at least an equally prominent descriptive characterization of the comparable GAAP measure.

Example SEC comment

The following is an SEC comment regarding the style in which a non-GAAP financial measure is presented.

You present, discuss and analyze certain non-GAAP measures in the bullet points presented in bold font in the headlines to your earnings release and as part of the disclosure therein without providing equally prominent presentation, discussion, or analysis of comparable GAAP measures. In addition, equally prominent descriptive characterizations of the comparable GAAP measures are not provided. This presentation appears inconsistent with the Compliance and Disclosure Interpretations, specifically Question 102.10.

Question 4.5.30 Does a GAAP measure need to be presented with at least a similar degree of discussion and analysis as a non-GAAP financial measure?

Interpretive response: Yes. At a minimum, a similar degree of discussion and analysis for the most directly comparable GAAP measure should be presented as compared to the corresponding non-GAAP financial measure.

The following situations would violate the prominence requirement because the non-GAAP financial measure is discussed and analyzed to a greater degree than the corresponding GAAP measure: [C&DI 102.10(a)]

- presenting a ratio in which a non-GAAP financial measure is the numerator and/or denominator without also presenting the ratio calculated using the most directly comparable GAAP measure(s) with equal or greater prominence;
- presenting charts, tables or graphs of non-GAAP financial measures without presenting charts, tables or graphs of the comparable GAAP measures with equal or greater prominence or omitting the comparable GAAP measures;

- providing discussion and analysis of a non-GAAP financial measure without a similar discussion and analysis of the comparable GAAP measure in a location with equal or greater prominence'; and
- presenting a non-GAAP income statement (see [section 4.5.30](#)).

Example SEC comments

The following are several illustrative SEC comments related to noncompliance with the equal or greater prominence requirement.

Comment 1: Failure to present measures or ratios calculated using the most directly comparable GAAP measure

We note that you disclose several ratios that are calculated using non-GAAP numbers, such as Net Debt / EBITDA. However, it does not appear you have provided reconciliations for each non-GAAP financial measure used in the calculations, nor shown the measures or ratios as calculated using the most directly comparable GAAP financial measures. In future filings please ensure all non-GAAP numbers are provided in accordance with the requirements of Item 10(e) of Reg S-K.

Comment 2: Failure to present the most directly comparable GAAP measure in a chart with a non-GAAP financial measure

We note you disclose Adjusted EBITDA over time in charts. Please revise the charts on page 3 and page 76 to present bar graphs for Net Income with equal or greater prominence. Refer to Question 102.10 of the Non-GAAP Compliance and Disclosure Interpretations.

Comment 3: Failure to present the most directly comparable GAAP measure

We note you disclose the margin for Adjusted EBITDA. Please present with greater or equal prominence the comparable margin, net income/ (loss) margin, computed on a GAAP basis wherever this non-GAAP margin is presented. Refer to Item 10(e)(1)(i)(A) of Regulation S-K and Question 102.10(a) of the staff's Compliance and Disclosure Interpretations 'Non-GAAP Financial Measures'.

Comment 4: Failure to present the most directly comparable GAAP measure on the same basis as a non-GAAP financial measure

We note you present Adjusted EBITDA margin on a consolidated and segment basis. Please present the most directly comparable GAAP margin with equal or greater prominence to comply with Item 10(e)(1)(i)(A) of Regulation S-K. Refer to Question 102.10 of the Compliance and Disclosure Interpretations for Non-GAAP Measures.

4.5.20 Prominence – Presenting the reconciliation

A key aspect of the SEC’s non-GAAP requirements is the reconciliation of each non-GAAP financial measure from its most directly comparable measure calculated and presented in accordance with GAAP. However, the SEC staff have cautioned that the presentation of this reconciliation can itself result in undue prominence being given to the non-GAAP financial measure. [C&DI 102.10(b)]

Question 4.5.40 What are some presentations of reconciliations the SEC staff believe violate the prominence requirement?

Interpretive response: The following are examples of presentations the SEC staff have observed result in the non-GAAP financial measure being more prominent than the comparable GAAP measure: [C&DI 102.10(b)]

- starting the reconciliation with a non-GAAP financial measure;
- presenting a non-GAAP income statement as part of the reconciliation (see [section 4.5.30](#)); and
- not including the required disclosures when excluding the reconciliation for a forward-looking non-GAAP financial measure.

Example SEC comment

The following is an SEC comment regarding the prominence of a reconciliation.

Your reconciliation of non-GAAP adjusted revenue margin to gross profit disclosed in your earnings release presents the non-GAAP measure more prominently than the comparable GAAP measure. Please revise the reconciliation to begin with the GAAP gross profit for equal or greater prominence. See Item 10(e)(1)(i)(A) of Regulation S- K and Question 102.10 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations.

4.5.30 Non-GAAP income statement

The SEC staff commonly object to the presentation of a non-GAAP income statement. Presentation of a non-GAAP income statement is generally prohibited because it would place undue prominence on the individual non-GAAP financial measures included therein. [C&DI 102.10(c)]

Question 4.5.50 What is considered a non-GAAP income statement?

Interpretive response: A non-GAAP income statement does not necessarily have to include all of the line items presented in the GAAP income statement to result in undue prominence. Presentation of non-GAAP financial measures in a format that includes most of the line items or subtotals found in a GAAP income statement would also be considered to give undue prominence to the non-GAAP information. [C&DI 102.10(c)]

Example SEC comment

The following is an SEC comment regarding the presentation of a non-GAAP income statement.

We note that you present the reconciliations of your non-GAAP measures from the most directly comparable GAAP measures in the form of a non-GAAP income statement, a presentation that gives greater prominence to the non-GAAP measures and is inconsistent with Question 102.10 of the updated C&DIs on Non-GAAP Financial Measures.

4.5.40 Repeated disclosure

Question 4.5.60 Must required reconciliations and disclosure information be presented everywhere that a non-GAAP financial measure appears in a filing or other document?

Interpretive response: No. The SEC staff have informally indicated that a registrant need not repeat the required reconciliation and disclosure information everywhere that a non-GAAP financial measure appears in a document. However, at least a cross reference to the location of that information may be required to avoid presenting a non-GAAP financial measure more prominently than a GAAP measure.

Example SEC comment

The following is an SEC comment regarding cross referencing disclosures.

We note your tabular presentation of Segment EBITDA also includes a line item for total Segment EBITDA, which is the consolidated segment amount. We also note you present and characterize it as a non-GAAP 'EBITDA' in the Non-GAAP Financial Measures section on page 43. Please provide a cross reference to the EBITDA to net income reconciliation as you

are referring to the same non-GAAP measure. Please revise to provide such disclosures as required by Item 10(e)(i)(C) of Regulation S-K.

4.6 Required statements

Reg S-K Item 10(e) requires two statements in SEC filings. [S-K Item 10(e)(1)(i)(C) and (D)]

Statement 1: Usefulness to investors	A statement disclosing the reasons why management believes the presentation of the non-GAAP financial measure provides useful information to investors about the registrant's financial condition and results of operations.
Statement 2: Uses by management	A statement disclosing any additional purpose, to the extent material, for which the registrant's management uses the non-GAAP financial measure.

Question 4.6.10 What type of information should the required statements contain?

Interpretive response: The statements should not be boilerplate; they should be substantive and specific to the:

- measure(s) used;
- nature of the registrant;
- registrant's business and industry; and
- manner in which management assesses and applies the measure, if any.

The SEC staff continue to emphasize that non-GAAP financial measures cannot be misleading. While a non-GAAP financial measure may be disclosed if not used by management in managing its business, the staff will object to measures they deem misleading, regardless of management's internal use or perceived investor and analyst demand. Therefore, arguments that a measure is not misleading solely because investors and other financial statement users expect to see it will not be accepted. Reasons for a measure's public disclosure generally do not, on their own, overcome the prohibitions in Regulation G, unless GAAP requires the disclosure. [C&DI 102.04, S-K Item 10(e)(1)(i)(D), 2025 AICPA Conf]

There have been many instances in which the SEC staff have questioned the adequacy of a registrant's disclosure related to the usefulness of the non-GAAP financial measure to investors.

Example SEC comment

The following is an SEC comment regarding boilerplate language in required Statement 1.

For each non-GAAP financial measure presented in future filings, please provide a statement disclosing the reasons why your management believes

that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations. Please note that each measure should be discussed separately, and that boilerplate disclosure alone, e.g. measure is useful to analysts, is not sufficient.

Question 4.6.20 Must the required statements appear in every SEC filing subject to Reg S-K?

Interpretive response: No. These disclosure requirements may be met by including the required statements in the most recent annual report filed with the SEC (or a more recent filing) and by updating those statements, as necessary, no later than the time of the filing containing the non-GAAP financial measures. Therefore, if the SEC filing that contains non-GAAP financial measures is not an annual report on Form 10-K or Form 20-F, the filing need not include all required statements if the omitted disclosures: [\[S-K Item 10\(e\)\(1\)\(iii\)\]](#)

- were included in the registrant's most recent annual report or a more recent filing; and
- are updated for any changes in facts or circumstances.

4.7 Prohibitions

S-K Item 10(e) includes specific prohibitions that apply to:

- filings with the SEC under the Securities Act and the Exchange Act; and
- Item 2.02 Form 8-Ks that are *filed* with the SEC (as opposed to *furnished* to the SEC).

This regulation prohibits the following for information in any of the above-described filings with the SEC. [\[S-K Item 10\(e\)\(1\)\(iii\)\]](#)

Prohibition	Explanation
<p>Excluding items that require cash settlement from liquidity measures (see section 4.7.10)</p>	<p>Charges or liabilities cannot be excluded from non-GAAP liquidity measures (other than EBIT and EBITDA) if they required (or will require) cash settlement, or would have required cash settlement absent an ability to settle in another manner.</p>
<p>Adjustments to GAAP earnings for nonrecurring, infrequent or unusual items (see section 4.7.20)</p>	<p>Non-GAAP performance measures cannot be adjusted to eliminate or smooth items identified as nonrecurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years.</p>
<p>Presenting in the financial statements (see section 4.7.30)</p>	<p>Non-GAAP financial measures cannot be presented on the face of GAAP-prepared financial statements or in the accompanying notes (unless the registrant elects to report multiple measures</p>

Prohibition	Explanation
	of segment profit or loss under Topic 280 – see section 5.3)
Presenting in pro forma financial information (see section 4.7.30)	Non-GAAP financial measures cannot be presented on the face of any pro forma financial information required to be disclosed by Reg S-X Article 11.
Using titles or descriptions similar to descriptions for GAAP financial measures (see section 4.7.40)	Titles or descriptions of non-GAAP financial measures are not permitted if they are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures.

Presenting *per-share measures of liquidity* is not permitted, whether furnished or filed with the SEC. This prohibition applies to any SEC form and is not limited to non-GAAP financial measures (see [section 4.7.50](#)). [FR-65.FN11]

4.7.10 Prohibition against excluding items that require cash settlement from liquidity measures

A registrant may not present in an SEC filing a non-GAAP liquidity measure that excludes charges or liabilities that require (or will require) cash settlement, or would have required cash settlement absent an ability to settle in another manner. [S-K Item 10(e)(ii)(A)]

There are several exceptions to this prohibition, two of which are discussed in [chapter 5](#):

- EBIT and EBITDA (see [section 5.2.10](#));
- disclosures in MD&A that may be required for material agreements (see [section 5.2.30](#)).

Observation Importance of classifying measures appropriately

The liquidity measure prohibition emphasizes the importance of management's initial classification of a non-GAAP financial measure as either a liquidity or performance measure. If a non-GAAP financial measure is described and treated as a performance measure, the registrant would be able to exclude charges or liabilities that require (or will require) cash settlement from that measure, subject to the prohibition discussed in [section 4.7.20](#).

Example SEC comment

The following is an SEC comment regarding excluding the cash flow effects of certain costs from a liquidity non-GAAP financial measure.

We note that your non-GAAP measure of Adjusted Free Cash Flow excludes the cash flow effect of restructuring and other costs, litigation

settlement, other litigation costs and management fees. Tell us what consideration you gave to the prohibition in Item 10(e)(ii)(A) of Reg S-K from excluding charges or liabilities that required, or will require, cash settlement from non-GAAP liquidity measures.

4.7.20 Prohibition against adjustments to GAAP earnings for nonrecurring, infrequent or unusual items

A registrant may not present in an SEC filing a non-GAAP performance measure that eliminates or smooths items identified as nonrecurring, infrequent or unusual: [S-K Item 10(e)(ii)(B)]

- when the nature of the charge or gain makes it reasonably likely to recur within two years; or
- there was a similar charge or gain within the prior two years.

Question 4.7.10 What does the term 'reasonably likely' mean?

Interpretive response: Determining whether it is reasonably likely a charge will recur within the two years is a matter of judgment. The SEC has stated that it views 'reasonably likely' as a threshold lower than 'more likely than not'. [FRM 9220.11]

Question 4.7.20 What constitutes a similar charge or gain?

Interpretive response: The SEC staff have informally indicated that they will apply a broad definition of the term 'similar' in assessing whether similar items have occurred or will occur in the future. For example, if a single restructuring plan generates a charge that includes several distinct components (e.g. employee severance, lease termination costs and asset impairments), the SEC staff would view all components of the restructuring plan as similar.

The magnitude of the charge does not affect the assessment of a 'similar' charge. For example, if a property and casualty insurance company recognizes an unusually large amount of casualty losses in any given period, those casualty losses would not be dissimilar in nature to other casualty losses.

Example SEC comment

The following is an SEC comment regarding eliminating nonrecurring, infrequent or unusual items from a non-GAAP financial measure.

We note that you exclude merger, acquisition, integration costs and other charges, settlement, litigation and other related charges and restructuring charges which are identified as nonrecurring, infrequent or unusual in

arriving at Adjusted EBITDA. We understand that you have incurred these charges in each of the last three annual reporting periods. Please note that Item 10(e)(1)(ii)(B) of Reg S-K prohibits you from adjusting a non-GAAP performance measure to eliminate or smooth items identified as nonrecurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years. Please review the C&DIs on Non-GAAP Financial Measures and revise accordingly.

Question 4.7.30 Does the prohibition against eliminating or smoothing items apply only when items are labeled as nonrecurring, infrequent or unusual?

Interpretive response: Yes. This specific prohibition is based on the description of the charge or gain being labeled as nonrecurring, infrequent or unusual. However, regardless of whether the registrant uses such a label, the requirements of Reg G and the other requirements of Reg S-K Item 10(e) apply in the usual way, as described elsewhere in this Handbook. [C&DI 102.03]

For example, the SEC staff have provided examples in which the exclusion of normal, recurring, cash operating expenses may result in a non-GAAP measure that is misleading. This includes the SEC staff's views of what constitutes 'normal' and 'recurring' (see [Question 4.2.20](#)).

Example 4.7.10 Excluding acquisition-related expenses

ABC Corp presents a non-GAAP financial measure that removes certain acquisition-related expenses (merger-related expenses and severance costs). ABC completed multiple acquisitions in the past two years and acquisitions will continue to be a key growth strategy of ABC going forward.

As long as the adjustments are not labeled or described as nonrecurring, infrequent or unusual, management may continue to adjust the non-GAAP financial measure for the same types of acquisition-related expenses.

4.7.30 Prohibition against placing non-GAAP financial measures in financial statements

In a filing with the SEC, a registrant may not present a non-GAAP financial measure: [S-K Item 10(e)(1)(ii)(C)-(D)]

- on the face of financial statements prepared in accordance with GAAP or in the accompanying notes; or
- on the face of any pro forma financial information provided to comply with Reg S-X Article 11 (or Rule 8-05 for a smaller reporting company).

To the extent a registrant elects to report multiple measures of segment profit or loss under Topic 280 – see [section 5.3](#).

Example SEC comments

The following are SEC comments regarding placing non-GAAP financial measures on the face of certain statements.

Comment 1: Non-GAAP financial measure on face of cash flow statement

Please revise your consolidated statements of cash flows as follows to remove the subtotals in the operating section since these represent non-GAAP measures, which are not permitted to be presented on the face of the financial statements.

Comment 2: Non-GAAP financial measure on face of pro forma financial information

Non-GAAP financial measures are not permitted on the face of any pro forma financial information that is required by Reg S-X Article 11. Please revise your filing accordingly. See Reg S-K Item 10(e)(1)(ii)(D).

4.7.40 Prohibition against using titles or descriptions that are the same or similar to GAAP measures

In a filing with the SEC, a registrant may not use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures. While this prohibition is in Reg S-K, a non-GAAP financial measure that is not clearly titled and described may also be considered misleading under Reg G. [S-K Item 10(e)(1)(iii)(E), C&DI 100.05]

Question 4.7.40 When might a title or description be prohibited under Reg S-K?

Interpretive response: It would be inappropriate to label a non-GAAP financial measure with a name that:

- could be interpreted as a GAAP measure; or
- may convey a measure that it does not actually represent.

For example, using labels like 'Free Cash Flow' or 'EBITDA' for a non-GAAP financial measure that has been adjusted for anything beyond the customary calculation would be inappropriately labeled. The SEC has frequently requested that such non-GAAP financial measure be updated to include the term 'adjusted'.

Question 4.7.50 What are some examples of labels or descriptions that could be misleading?

Interpretive response: C&DI 100.05 reiterates that without the appropriate label and description, a non-GAAP financial measure and/or adjustments that

are a part of that measure could be misleading to investors. The following items are specific examples cited by the staff in this C&DI. [C&DI 100.05]

- Registrant fails to identify and describe a measure as non-GAAP.

This view does not mean that the title of the measure must include the term 'non-GAAP', but an understanding that a measure is non-GAAP and what the comparable GAAP measure is should be clear to investors.

- Registrant uses labels that do not reflect the nature of the non-GAAP measure, such as:
 - labeling a contribution margin measure calculated as GAAP revenue less certain expenses as 'net revenue';
 - labeling a non-GAAP financial measure the same as a GAAP measure (line item or subtotal) even though calculated differently, e.g. 'gross profit' or 'sales'; and
 - labeling a non-GAAP financial measure with 'pro forma' in the title when it is not calculated consistent with Reg S-X Article 11.

For example, registrants have labeled a non-GAAP financial measure as 'pro forma' to demonstrate the effect of an acquisition on their historical financial statements. The SEC staff have commented that labeling these measures under this context would be inappropriate because it would imply that their titles were prepared pursuant to Reg S-X Article 11.

Example SEC comments

The SEC has provided numerous comments requesting registrants to clearly and consistently identify and label their non-GAAP financial measures to differentiate them from GAAP measures.

Comment 1: Labeling a non-GAAP financial measure as 'normalized'

Your labeling of the measure as 'normalized' and the disclosure that inclusion or exclusion of certain items is necessary to "provide the most accurate measure of core operating results" implies the non-GAAP measure is more meaningful or accurate than the comparable GAAP measure. Please revise accordingly.

Comment 2: Using titles for non-GAAP measures that are the same, or confusingly similar to, titles or descriptions used for GAAP measures

We note that you present a non-GAAP measure entitled Operating Earnings. 'Earnings from operations,' 'operating income,' 'operating earnings' and 'profit from operations' are terms used in US GAAP to refer to income that is generated by the ordinary and usual activity of a reporting entity. Please tell us how your presentation complies with Item 10(e)(1)(ii)(E) which prohibits you from using titles for non-GAAP measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures.

Comment 3: Labeling a contribution margin measure calculated as GAAP revenue less certain expenses as net revenue

You present the non-GAAP measure 'net service revenue', which you define as revenue, net of subcontractor and other direct costs. Please explain to us (i) why it is appropriate to deduct costs from revenue to arrive at a revenue amount, (ii) what this measure is intended to represent and (iii) how this measure achieves your assertion that it provides investors with a better understanding of your operational performance.

Comment 4: Labeling a non-GAAP financial measure the same as a GAAP measure even though calculated differently

We note you currently reconcile both historical and pro forma Revenue to a Gross Profit measure, that excludes depreciation and amortization. As such, this appears to be a non-GAAP measure as it excludes depreciation and amortization. Please revise your presentation to label this reconciliation as non-GAAP and reconcile it to GAAP gross profit.

Comment 5: Labeling a non-GAAP financial measure with 'pro forma' in the title when it is not calculated consistent with Reg S-X Article 11

The non-GAAP financial measures described as 'pro-forma' in the Form 8-K do not appear to be presented in accordance with Reg S-X Article 11 in light of the nature of the adjustments made. Please change the labeling of these measures by removing the wording 'pro forma' to properly reflect their nature.

4.7.50 Prohibition against presenting per-share liquidity measures

Per-share measures of liquidity (e.g. cash flow per share) are expressly prohibited under both Topic 230 and SEC rules. This specific prohibition applies to all filings with the SEC and any Form 8-K that is furnished to the SEC. See [Question 4.3.10](#) on what constitutes a liquidity measure. [C&DI 102.05, FR-65.FN 11, 230-10-45-3]

Example SEC comment

The following is an SEC comment regarding the improper presentation of a non-GAAP liquidity measure on a per share basis.

You disclose that you believe the non-GAAP measures presented, including Adjusted EPS, allow investors to gain a better understanding of the factors and trends affecting the ongoing cash earnings capabilities of your business for which capital investments are made and debt is serviced. From this it appears the non-GAAP measures are intended to be measures of liquidity. Presenting non-GAAP liquidity measures on a per share basis is not consistent with 102.05 of the updated C&DIs on Non-GAAP Financial Measures. Please review this guidance when preparing your next earnings release.

Question 4.7.60 Are per-share measures of performance prohibited?

Interpretive response: It depends.

Prohibited per-share measures of performance

Per-share measures of performance are prohibited in a filing with the SEC if they are prohibited non-GAAP financial measures under the general principles described in [sections 4.7.10 to 4.7.40](#). For example, a per-share performance measure is prohibited if it includes an adjustment to GAAP earnings for an item labeled as nonrecurring, infrequent or unusual, when the item is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years (see [section 4.7.20](#)).

Additionally, whether per share data is prohibited depends on whether the non-GAAP measure *can* be used as a liquidity measure, even if it is characterized solely as a performance measure by the registrant. Non-GAAP liquidity measures that measure cash generated are prohibited from being presented on a per share basis consistent with Accounting Series Release No. 142. [\[C&D 102.05\]](#)

Nonprohibited per-share measures of performance

Other non-GAAP per-share performance measures are not prohibited if a registrant reconciles the non-GAAP per-share measure to GAAP EPS. In addition, the statements outlined in [section 4.6](#) are required. [\[C&D 102.05\]](#)

The per-share measure should be determined using a GAAP method of calculation – e.g. EPS under Topic 260. In addition, registrants should present per-share non-GAAP financial measures on a diluted basis. [\[FR-65.FN49\]](#)

Example SEC comment

The following is an SEC comment regarding the improper presentation of a per share non-GAAP financial measure.

In determining the non-GAAP number of shares used in your non-GAAP diluted earnings per share calculations, you include the effect of call options even though they are anti-dilutive and pursuant to the no anti-dilution principle outlined in ASC paragraphs 260-10-45-17 to 45-20 should be excluded from earnings per share calculations. Your use of an individually tailored principle in measuring non-GAAP earnings per share is inconsistent with Question 100.04 of the updated C&DIs on Non-GAAP Financial Measures. Please review this guidance when preparing your next earnings release. We remind you that the company and its management are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action or absence of action by the staff.

5. Specific considerations

Detailed contents

5.1 How the SEC Rules work

5.2 EBIT and EBITDA

5.2.10 Overview

5.2.20 EBITDA calculated by lessees

5.2.30 Disclosures related to material items affecting liquidity

Questions

Question 5.2.10 How must EBIT and EBITDA be calculated?

Question 5.2.20 If a measure purports to be EBIT or EBITDA but is not calculated as such, what titles or disclosures are required?

Question 5.2.30 How is the most comparable GAAP measure for EBIT or EBITDA identified?

Question 5.2.40 How does the SEC staff view EBITDA presented by lessees under Topic 842 and IFRS 16?

Question 5.2.50 What are the requirements for presenting an otherwise prohibited non-GAAP financial measure that relates to material items affecting liquidity?

5.3 Segment information

5.3.10 Disclosures under Topic 280

5.3.20 Presentation outside of the financial statements

Questions

Question 5.3.10 Are measures disclosed in financial statements under Topic 280 subject to the SEC's non-GAAP rules?

Question 5.3.20 Does the SEC staff's objection to a non-GAAP segment performance measure require a restatement?

Question 5.3.30 Are there specific considerations for registrants that present segment information outside the financial statements and notes?

Question 5.3.40 Are entity-wide disclosures non-GAAP financial measures when discussed outside of the financial statements?

Examples

Example 5.3.10 Presenting segment profit or loss in the notes of the financial statements

Example 5.3.20 One measure of segment profit or loss

Example 5.3.30 Multiple measures of segment profit or loss that all are consistent with GAAP

Example 5.3.40 Multiple measures of segment profit or loss, some of which are not consistent with GAAP

Example 5.3.50 Combined reconciliation in the notes to the financial statements (compliant with Topic 280 and SEC's non-GAAP rules)

Example 5.3.60 Presenting consolidated segment profit or loss in MD&A

Example 5.3.70 Presenting product revenue in MD&A

5.4 Free cash flow

Questions

Question 5.4.10 How does the SEC define free cash flow?

Question 5.4.20 How does the SEC expect free cash flow measures to be presented?

5.5 Tax adjustments

Questions

Question 5.5.10 Are the income tax effects on a non-GAAP financial measure disclosed?

Question 5.5.20 How are tax effects on a non-GAAP financial measure determined and disclosed?

Example

Example 5.5.10 Presenting tax effect of adjustments

5.6 Pension adjustments

Questions

Question 5.6.10 What disclosures are generally appropriate for a pension adjustment in a non-GAAP financial measure?

Question 5.6.20 Is disclosure of a non-GAAP adjustment for 'noncash pension expense' appropriate?

Question 5.6.30 What disclosures are appropriate for a pension adjustment in a non-GAAP financial measure that excludes actuarial gains or losses?

5.7 Constant currency presentation

Question

Question 5.7.10 Are amounts presented in constant currency non-GAAP financial measures?

Example

Example 5.7.10 Presenting constant currency amounts

5.8 Normalized market prices

Question

Question 5.8.10 Are normalized market price non-GAAP financial measures permitted?

5.9 System-wide revenues

Question

Question 5.9.10 Are system-wide non-GAAP financial measures permitted?

5.10 REIT reporting

5.10.10 Funds from operations (FFO)

5.10.20 Pro rata information

Questions

Question 5.10.10 Are FFO non-GAAP financial measures permitted?

Question 5.10.20 Is the presentation of pro rata information consistent with the C&DIs?

Example

Example 5.10.10 REIT reporting of pro rata information

5.1 How the SEC Rules work

There are specific issues to several types of non-GAAP financial measures.

EBIT and EBIDTA

EBIT and EBIDTA are commonly used non-GAAP financial measures. Measures described as EBIT or EBIDTA may include only the specific components in their acronym. Any deviation may require the measure’s label to reflect a deviation; for example, a measure may have to be labeled Adjusted EBIT or Adjusted EBIDTA.

Whether adjusted or not, EBIT and EBIDTA must follow the non-GAAP rules. However, unadjusted EBIT and EBIDTA are not subject to the prohibition of excluding charges or liabilities that require (or will require) cash settlement, or would have required cash settlement absent an ability to settle in another manner.

Segment information

Segment information in the financial statements: Measures of segment profit or loss and total assets *required* to be disclosed by Topic 280 are not non-GAAP financial measures because they are required by GAAP. In contrast, any additional measures of profit or loss not required or expressly permitted under Topic 280 are non-GAAP financial measures that must comply with the SEC’s non-GAAP rules.

Segment information outside of the financial statements: Such information is subject to the non-GAAP rules.

Free cash flow

Free cash flow is typically calculated as cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures. If other adjustments are made, the measure may have to be labeled accordingly (e.g. ‘adjusted free cash flow’). Specific disclosures apply.

Tax adjustments

The requirements for disclosing the income tax effects of non-GAAP financial measures may vary depending on whether the measures are liquidity measures or performance measures. Adjustments to non-GAAP measures should be presented gross of tax with the tax effect presented as a separate adjustment and clearly explained.

Other non-GAAP financial measures

Several other non-GAAP financial measures requiring specific attention are discussed in this chapter.

Pension adjustments	Measure that reflects adjustments for pension benefits
----------------------------	--

Constant currency presentation	Method used to eliminate the effects of exchange rate fluctuations when calculating the financial performance of a registrant's international operations
Normalized market prices	Measure using normalized market prices to eliminate the effect of commodity price volatility
System-wide revenues	Measure used when there is similar economic activity that may be reflected in the financial statements in different ways (e.g. both registrant-owned locations and franchised locations)
REIT reporting	Funds from operations (FFO) Pro rata financial statements

5.2 EBIT and EBITDA

5.2.10 Overview

EBIT and EBITDA are non-GAAP financial measures and as such are subject to all the SEC's non-GAAP rules. However, they are exempt from the prohibition of excluding charges or liabilities that require (or will require) cash settlement, or would have required cash settlement absent an ability to settle in another manner (see [section 4.7.10](#)).

Question 5.2.10 How must EBIT and EBITDA be calculated?

Interpretive response: The calculation of EBIT and EBITDA may include only the specific components in the acronym. Therefore: [\[C&DI 103.01\]](#)

- EBIT must start with net income as presented in the GAAP statement of operations and only include adjustments for interest and taxes; and
- EBITDA must start with net income as presented in the GAAP statement of operations and only include adjustments for interest, taxes, depreciation and amortization.

Taxes in both EBIT and EBITDA include only income taxes as presented in the statement of operations – i.e. no excise, payroll or other taxes are included in the adjustments.

If some other measure of earnings is used, or if items other than interest, taxes, depreciation and amortization are deducted from GAAP earnings, the prohibition described in [section 4.7.10](#) applies (i.e. items that require cash settlement cannot be excluded from the non-GAAP financial measure).

Question 5.2.20 If a measure purports to be EBIT or EBITDA but is not calculated as such, what titles or disclosures are required?

Interpretive response: When presenting a measure that does not meet the description of EBIT or EBITDA, a registrant has to: [\[C&DI 103.01\]](#)

- title the other measure in a way that distinguishes it from EBIT or EBITDA, such as Adjusted EBIT or Adjusted EBITDA; and
- describe or title the measure in a manner that clearly indicates what is calculated differently than EBIT or EBITDA.

Question 5.2.30 How is the most comparable GAAP measure for EBIT or EBITDA identified?

Interpretive response: Identifying the most directly comparable GAAP measure for EBIT and EBITDA will depend on whether the EBIT or EBITDA measure is a liquidity measure or a performance measure. See [Question 4.3.10](#) for guidance on how to make this determination.

EBIT/EBITDA as a liquidity measure

When EBIT or EBITDA is presented as a liquidity measure, the measure must be reconciled to an amount from the statement of cash flows – e.g. cash from operating activities.

In addition, as required for the presentation of all liquidity non-GAAP financial measures, the three major categories of the statement of cash flows are to be presented with equal or greater prominence with the liquidity measure (see [Question 4.3.40](#)). [FR-65.II.B.2, C&DI 102.06]

A registrant cannot present EBIT or EBITDA as a liquidity measure on a per-share basis (see [section 4.7.50](#)). [C&DI 102.05]

EBIT/EBITDA as a performance measure

When EBIT or EBITDA is presented as a performance measure, the measure must be reconciled to net income in the statement of operations, which is considered the most directly comparable GAAP measure. The SEC staff do not consider operating income to be the most directly comparable GAAP measure because EBIT and EBITDA include adjustments for items that are not included in operating income. [C&DI 103.02]

If a registrant presents EBIT or EBITDA as a performance measure, it may also present the measure on a per-share basis. In that case, the disclosure requirements noted in [section 4.6](#) apply.

5.2.20 EBITDA calculated by lessees

Topic 842 and IFRS 16 (leases) both require lessees to capitalize right-of-use (ROU) assets on the balance sheet. However, they have multiple differences relevant to the calculation of EBITDA.

- IFRS 16 requires lessees to amortize the capitalized ROU asset through depreciation expense for all leases. Topic 842 also requires lessees to amortize the ROU asset through depreciation expense but only for finance leases; lessees amortize the ROU assets through lease expense for operating leases.
- IFRS 16 requires lessees to record interest expense on all leases; Topic 842 requires interest expense to be recorded on finance leases only.

Question 5.2.40 How does the SEC staff view EBITDA presented by lessees under Topic 842 and IFRS 16?

Interpretive response: The SEC staff have objected to the following as individually tailored accounting principles regarding the presentation of EBITDA: [Regs Comm 03/2019]

- Registrants reporting under US GAAP adjusting EBITDA for any leasing-related operating expense, such as the amortization of ROU assets as 'depreciation expense', because it is not recorded as such under Topic 842.
- Registrants reporting under IFRS® Accounting Standards adjusting EBITDA for interest and depreciation solely related to leases.

As an alternative, registrants may separately identify the differences between IFRS Accounting Standards and US GAAP in their filings. The SEC staff noted that this disclosure could include: [Regs Comm 03/2019]

- for a registrant reporting under US GAAP, separately disclosing lease expense recognized during a period attributable to operating leases consistent with Topic 842; or
- for a registrant reporting under IFRS Accounting Standards, separately disclosing the amount of interest and depreciation expenses under IFRS 16.

5.2.30 Disclosures related to material items affecting liquidity

Notwithstanding the prohibition on filings with the SEC for a non-GAAP liquidity measure that excludes cash-related items other than EBIT and EBITDA (see [section 4.7.10](#)), in certain circumstances it may be appropriate for a registrant to disclose in MD&A a non-GAAP liquidity measure that is prohibited (e.g. adjusted EBITDA) to discuss items material to liquidity. [C&DI 102.09]

Question 5.2.50 What are the requirements for presenting an otherwise prohibited non-GAAP financial measure that relates to material items affecting liquidity?

Background: A registrant's credit agreement may include a material covenant for a non-GAAP financial measure, such as Adjusted EBIT or EBITDA, where EBIT or EBITDA are adjusted to exclude charges or liabilities that must be cash settled.

Interpretive response: MD&A requires disclosure of material items affecting liquidity. Therefore, the non-GAAP financial measure described in the background section may be disclosed in MD&A if: [C&DI 102.09]

- the debt agreement is a material agreement;
- the covenant is a material term of the debt agreement; and
- the information about the covenant is material to an investor's understanding of the financial condition and/or liquidity.

A registrant should also consider disclosing: [C&DI 102.09]

- the material terms of the debt agreement, including the covenant;
 - the amount or limit required for compliance with the covenant; and
 - the actual or reasonably likely effects of compliance or noncompliance with the covenant on financial condition and liquidity.
-

5.3 Segment information

5.3.10 Disclosures under Topic 280

Under Topic 280, a company is required to report a measure of profit or loss and total assets for each reportable segment. Often companies with multiple reportable segments disclose a segment measure for each reportable segment that differs from GAAP net income. These amounts could differ from GAAP net income because the amount of each segment item reported shall be the measure reported to the chief operating decision maker for purposes of making decisions about allocating resources to the segment and assessing performance. [280-10-50-27]

See KPMG Handbook, [Segment reporting \(post-ASU 2023-07\)](#). Also, see [chapter 7](#) for specific considerations regarding segment information for FPIs and [chapter 8](#) for ICFR considerations regarding segment information.

Question 5.3.10 Are measures disclosed in financial statements under Topic 280 subject to the SEC's non-GAAP rules?

Interpretive response: It depends. The definition of non-GAAP financial measures excludes the disclosures of segment profit or loss and total assets *required* by Topic 280 (i.e. because they are required by GAAP). In addition, Topic 280 requires disclosure of other quantitative information regularly provided to the CODM or included in the segment profit or loss measure or assets measure reviewed by the CODM (e.g. revenues, interest income and expense). This additional information for each segment is also excluded from the definition of non-GAAP financial measures (see [Question 2.2.60](#)). [C&DI 104.01, 280-10-50-22 – 50-26C]

Besides the measure of segment profit or loss that a company is *required* to disclose Topic 280 permits *voluntary* disclosure of additional measures of profit or loss. If the chief operating decision maker uses more than one measure of a segments profit or loss in assessing segment performance and allocating resources, the *required* measure shall be that which management believes is determined in accordance with the measurement principles most consistent with those used in measuring the corresponding amounts in the registrant's consolidated financial statements.

Topic 280 does *not* require or expressly permit disclosure of these specific additional segment profitability measures meaning Topic 280 does not require or specifically identify the additional measures that may be reported (i.e.,

EBITDA). However, the SEC staff has stated that they will not object to additional measures of segment profit or loss in the notes to the financial statements that are not calculated in accordance with GAAP so long as the registrant complies with both the provisions of Topic 280 as well as the SEC's non-GAAP rules (Reg G and Item 10(e) of Reg S-K). Additionally, registrants should consider the requirement in Rule 4-01(a) of Reg S-X if they voluntarily elect to disclose an additional non-GAAP segment measure in the notes to the financial statements by providing appropriate disclosure to ensure the financial statements are not misleading. [2024 AICPA Conf, Regs Comm 10/2024]

Example SEC comment

The following is an SEC comment regarding presentation of an additional measure of segment profit or loss not required or expressly permitted by Topic 280.

We note your presentation of Total Adjusted Segment EBITDA and Total Segment Profit in the table on page 28 and 30, respectively. Please be advised that the presentation of total segment profit or loss measure in any context other than Topic 280 requiring reconciliation in the footnote would be considered a presentation of a non-GAAP financial measure. In this regard, please comply with the disclosure requirements outlined in Item 10(e)(1)(i) of Regulation S-K with respect to Total Adjusted Segment EBITDA and Total Segment Profit. Further, your presentation of Total Adjusted Segment EBITDA in the table on page 30, including the reconciliation of Adjusted Segment EBITDA to income from continuing operation before income taxes, should be revised to present the most directly comparable GAAP measure with equal or greater prominence. Refer to Questions 102.10 and 104.04 of the SEC's Division of Corporation Finance C&DIs on Non-GAAP Financial Measures.

Example 5.3.10 Presenting segment profit or loss in the notes of the financial statements

ABC Corp has five reportable segments. Apples, Blueberries, Cherries, Dragon Fruit and Elderberry. Segment financial information is shown below. For simplicity, this example does not consider segment assets and solely focuses on segment profit or loss.

ABC's segment measure of profit and loss is adjusted earnings before interest, taxes, depreciation and amortization (Operational EBITDA). As demonstrated in the table below, Operational EBITDA represents the earnings (loss) from continuing operations excluding interest expense, income taxes, depreciation and amortization, restructuring costs, stock-based compensation and loss on early extinguishment of debt.

Operational EBITDA ¹	
Apples segment	150
Blueberries segment	75

Operational EBITDA ¹	
Cherries segment	200
Dragon Fruit segment	120
Elderberry segment	40
Total of reportable segments	585
Interest expense ²	(5)
Income taxes ²	(75)
Depreciation and amortization ²	(110)
Restructuring costs ²	(10)
Stock-based compensation ²	(15)
Loss on early extinguishment of debt ²	(5)
Consolidated earnings (loss) from continuing operations before income taxes	365
Notes:	
<ol style="list-style-type: none"> Individual segment Operational EBITDA for Applies, Blueberries, Cherries, Dragon Fruit and Elderberry are <i>not</i> considered non-GAAP financial measures because the amounts are required disclosures under Topic 280. Items below Total of reportable segments are reconciling items required by GAAP and are <i>not</i> considered non-GAAP adjustments. 	

Example 5.3.20 One measure of segment profit or loss

ABC Corp has the same five reportable segments as in [Example 5.3.10](#). Its CODM regularly reviews segment EBITDA to assess segment performance for each of its five reportable segments and allocate resources. The CODM does not use any additional measures of segment profit or loss.

In this case, segment EBITDA for Apples, Blueberries, Cherries, Dragon Fruit and Elderberry is the required measure of segment profit or loss to be disclosed under Topic 280. Because it is the required measure, it is not considered a non-GAAP measure.

However, presentation of segment EBITDA in any other context than the required segment reconciliation and disclosure pursuant to Topic 280 would be considered a non-GAAP measure. For example, if in the segment footnote to the consolidated financial statements, ABC were to total the segment EBITDA to reconcile segment EBITDA to the closest GAAP measure and present that total segment EBITDA outside of the financial statements, the total segment EBITDA measure would be subject to the SEC's non-GAAP rules and regulations.

Example 5.3.30 Multiple measures of segment profit or loss that all are consistent with GAAP

ABC Corp's CODM regularly reviews GAAP operating profit and GAAP gross profit to assess segment performance and allocate resources for each of its five reportable segments.

ABC determines that GAAP operating profit is the required measure of segment profit or loss under Topic 280 because this measure represents the measure of segment performance that is most consistent with GAAP measurement principles. It also concludes that GAAP gross profit has been determined in a manner consistent with GAAP measurement principles.

Even though GAAP gross profit represents an additional measure of segment profit or loss that is voluntarily disclosed, it is determined in accordance with GAAP. Accordingly, ABC concludes the disclosure of both segment gross profit and operating profit are consistent with Topic 280, and as such neither would be subject to the SEC's non-GAAP rules and regulations when presented in the financial statements notes.

Example 5.3.40 Multiple measures of segment profit or loss, some of which are not consistent with GAAP

ABC Corp's CODM regularly reviews GAAP operating profit and EBITDA to assess segment performance and allocate resources for each of its five reportable segments.

ABC determines that GAAP operating profit is the required measure of segment profit or loss under Topic 280 because it represents the measure of segment performance that is most consistent with GAAP measurement principles. Further, EBITDA is an additional measure that is permitted to be disclosed under Topic 280; however, it is not required or expressly permitted. Therefore, disclosure of segment EBITDA is subject to the SEC's non-GAAP rules. See [Example 5.3.50](#) for an illustration of the required reconciliation.

Example 5.3.50 Combined reconciliation in the notes to the financial statements (compliant with Topic 280 and SEC's non-GAAP rules)

ABC Corp's CODM regularly reviews GAAP segment profit and segment EBITDA to assess segment performance and allocate resources for its two reportable segments. ABC has identified GAAP segment profit as the required measure of segment profit or loss because it is the measure of segment performance that is most consistent with GAAP measurement principles. Because ABC has voluntarily elected to disclose segment EBITDA as an additional measure of segment performance in the notes to the financial statements, which is considered a non-GAAP measure, it must comply with the SEC's non-GAAP rules. As a result, it includes the reconciliations required by

Topic 280 for both GAAP segment profit and segment EBITDA and an additional reconciliation required by the SEC’s non-GAAP rules.

ABC elects to provide the following combined reconciliation in the segment footnote to satisfy each of these disclosure requirements concurrently (both reconciliations required by Topic 280 and S-K Item 10(e)). [Regs Comm 10/2024]

	Reportable Segment A	Reportable Segment B	Total
Segment profit	500	1,000	1,500
Depreciation and amortization	20	40	60
Interest	10	20	30
Segment EBITDA	530	1,060	1,590
Unallocated corporate expenses			(100)
Depreciation and amortization			(60)
Interest			(30)
Profit before tax			1,400

Question 5.3.20 Does the SEC staff’s objection to a non-GAAP segment performance measure require a restatement?

Interpretive response: Not necessarily. The SEC staff’s objection to a non-GAAP segment performance measure (including a measure disclosed in the notes to the financial statements) based solely on the SEC’s non-GAAP rules when the measure is otherwise compliant with Topic 280 may not warrant a restatement. However, if a measure is modified or removed because it does not comply with Topic 280 (i.e. the CODM does not use the measure to assess segment performance and allocate resources), its removal would constitute the correction of an error under Topic 250. [2024 AICPA Conf, Regs Comm 10/2024]

When the staff object to a non-GAAP measure based solely on the SEC’s non-GAAP rules, the staff historically expected the measure to be removed immediately from all future disclosures, including comparative periods. The staff indicated if the immediate removal or revision is overly burdensome or impracticable (e.g. within days of an earnings release), companies may contact their SEC filing review team to discuss timing of the measures removal. [2025 AICPA Conf]

5.3.20 Presentation outside of the financial statements

Registrants commonly present and discuss non-GAAP financial measures outside of the financial statements – e.g. in MD&A, Business section of Form 10-K, or an earnings release. For example, a registrant may discuss segments

or other subdivisions of its business in MD&A, and may be required to do so if this discussion is necessary to an understanding of the business. The discussion generally includes segment measures reported in the GAAP financial statements under Topic 280.

Question 5.3.30 Are there specific considerations for registrants that present segment information outside the financial statements and notes?

Interpretive response: Yes. The SEC staff acknowledged that the location of any disclosures made solely to comply with the SEC's non-GAAP rules is not prescribed, other than being within the filing that includes such measures. [2024 AICPA Conf]

However, when a registrant discusses segment profitability based on amounts determined under Topic 280 outside of the financial statements, it should include a complete discussion of the reconciling items that apply to the particular segments being discussed even though the measures are not non-GAAP financial measures. [FR-65.FN19, C&DI 104.02]

There are several other considerations for registrants to consider when discussing segment profitability determined under Topic 280 outside of the financial statements.

- Any adjustments to a required measure of segment profit or loss determined under Topic 280 to eliminate or add items cause the measure to no longer be compliant with Topic 280 and creates a new non-GAAP financial measure subject to all the provisions of Regs G and S-K Item 10(e); and, [C&DI 104.03]
- Totaled segment profit and loss measures (summation of segment results before any reconciling items) outside of the reconciliation requirements of Topic 280 are non-GAAP financial measures subject to the requirements of Regs G and S-K Item 10(e). This applies to both the required measure of segment profit or loss and any additional measures that are permitted to be disclosed. The SEC staff believe that presenting total segment profit/loss measures in any context other than the Topic 280 required reconciliation in the notes to the financial statements is considered to be presenting non-GAAP financial measures; this is because these total segment profit or loss measures have no authoritative meaning outside Topic 280. [C&DI 104.04]

Example SEC comment

The following is an SEC comment regarding presentation of segment gross margin for reportable segments.

We note you present and discuss segment gross margin for each of your reportable segments in addition to segment operating income (loss) in both your Form 10-K and in the press release included in your Form 8-K. Please revise to label segment gross margin as a non-GAAP financial measure and provide the required disclosures pursuant to Item 10(e) of Regulation S-K or

tell us why you believe segment gross margin is not a non-GAAP financial measure.

Example 5.3.60 Presenting consolidated segment profit or loss in MD&A

Given the segment information presented in [Example 5.3.10](#), if ABC Corp presents and discusses *total* Operational EBITDA of \$585 in MD&A, the measure would be considered a non-GAAP financial measure in M&DA subject to the provisions of Regs G and S-K Item 10(e).

The presentation and discussion of *individual segment* Operational EBITDA in MD&A does not create new non-GAAP financial measures subject to Regs G and S-K Item 10(e) because they are required disclosures under Topic 280. However, if ABC were to adjust each segment's Operational EBITDA (e.g. removing additional items such as acquisition-related costs and impairment), each adjusted measure would no longer be considered a GAAP measure under Topic 280 and would become subject to the provisions of Regs G and S-K Item 10(e).

Question 5.3.40 Are entity-wide disclosures non-GAAP financial measures when discussed outside of the financial statements?

Background: Topic 280 requires a company to disclose revenues by geographic location or product line on an entity-wide basis. Companies may present this information in MD&A or other locations.

Interpretive response: It depends. When included in the MD&A or other locations, these entity-wide disclosures are not considered non-GAAP financial measures if the amounts presented are calculated in accordance with Topic 280. However, if the amounts are adjusted to eliminate the effects of certain items, such as changes in foreign currency exchange rates (i.e. amounts do not equal revenues under GAAP), they are non-GAAP financial measures subject to the requirements of Regs G and S-K Item 10(e). [[C&DI 104.05](#), [104.06](#)]

Example 5.3.70 Presenting product revenue in MD&A

ABC Corp discloses the following in MD&A as part of its discussion of revenues from its two product lines – conventional and organic.

	Conventional	Organic
Apples segment	90	60
Blueberries segment	10	65
Cherries segment	160	40

	Conventional	Organic
Dragon Fruit segment	110	10
Elderberry segment	40	-

Individual segment revenues for Applies, Blueberries, Cherries, Dragon Fruit and Elderberry are *not* non-GAAP financial measures. This is because the amounts are determined and presented in accordance with GAAP as part of the entity-wide disclosures required by Topic 280. Even if the total amount of segment revenue presented in MD&A does not equal total consolidated revenue as presented in ABC’s financial statements, the figures themselves are still considered GAAP measures.

5.4 Free cash flow

Free cash flow is a common non-GAAP financial measure used to relay information on liquidity.

Question 5.4.10 How does the SEC define free cash flow?

Interpretive response: A definition for this measure has not been codified. However, the SEC staff have commented that free cash flow is typically calculated as cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures. Historically, when registrants have added other adjustments that go beyond the ‘typical’ calculation of free cash flow, the SEC staff have commented, asking registrants to relabel the measure, e.g. as ‘adjusted free cash flow’.

Question 5.4.20 How does the SEC expect free cash flow measures to be presented?

Interpretive response: When presenting free cash flow as a non-GAAP financial measure, the SEC staff expect disclosures to provide: [C&DI 102.07]

- a clear description of how the measure is calculated;
- all material limitations of the measure (if any); and
- a reconciliation from GAAP.

Registrants should avoid inappropriate or potentially misleading implications about the usefulness of free cash flow as a non-GAAP financial measure. For example, a registrant should not use free cash flow in a manner that inappropriately implies that the measure represents residual cash flow available for discretionary spending, because the registrant may have mandatory debt service expenditures or other nondiscretionary expenditures not deducted in arriving at the measure of free cash flow. [C&DI 102.07]

Additionally, because free cash flow is a liquidity measure, it cannot be presented on a per-share basis (see [section 4.7.50](#)). [C&DI 102.07]

Example SEC comment

The following is an SEC comment regarding mislabeling of a non-GAAP financial measure as free cash flow.

Your computation of free cash flow differs from the typical calculation (cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures). Therefore, please revise the title of this non-GAAP measure so it is not confused with free cash flow as typically calculated. See Question 102.07 of the updated C&DIs on Non-GAAP Financial Measures. We remind you that the company and its management are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action or absence of action by the staff.

5.5 Tax adjustments

Question 5.5.10 Are the income tax effects on a non-GAAP financial measure disclosed?

Interpretive response: It depends on the nature of the measure.

- **Liquidity measure:** If the measure includes income taxes, it might be acceptable to adjust GAAP taxes to show taxes paid in cash. [C&DI 102.11]
 - **Performance measure:** The SEC staff believe a registrant should include current and deferred income tax expense commensurate with the non-GAAP measure of profitability. [C&DI 102.11]
-

Question 5.5.20 How are tax effects on a non-GAAP financial measure determined and disclosed?

Interpretive response: There is no specific method required for determining the tax effects of non-GAAP adjustments. We believe a non-GAAP disclosure should clearly explain how the current and deferred tax effects were determined.

Adjustments to arrive at a non-GAAP financial measure should be shown gross of tax with the tax effect presented as a separate adjustment and clearly explained. The tax effects of all adjustments may be presented in a single line or the tax effect for each individual adjustment may be presented separately. [C&DI 102.11]

However, if there is a material, one-time tax expense (benefit), the SEC staff may expect the one-time tax expense be presented separately from the tax effects of the non-GAAP adjustments.

Example SEC comments

The following are SEC comments regarding presentation of the tax effects of reconciling adjustments with one-time tax expense (benefit) items.

Comment 1: Additional disclosure of single caption

You present the tax effects of the reconciling adjustments combined with your one-time tax expense (benefit) items. In light of the material one-time tax expense (benefit) items reported in each period, please revise your presentation in future filings to clearly identify and describe the significant components of this caption.

Comment 2: Separate caption for one-time tax expense (benefit) items

Consider presenting the one-time tax expense (benefit) items in a separate caption. Refer to Question 102.11 of the updated C&DIs on Non-GAAP Financial Measures.

Example 5.5.10 Presenting tax effect of adjustments

Scenario 1: Presenting tax effects of all adjustments in a single line

	Amount
Net income (GAAP)	1,000
Asset impairment	100
Inventory write-down	50
Tax effect of adjustments ¹	(32)
One-time tax expense (benefit) items ²	(150)
Adjusted earnings (non-GAAP)	968

Notes:

1. Tax effect was calculated using the Company's statutory rate of 21%.
2. Represents the release of a significant unrecognized tax benefit liability.

Scenario 2: Presenting tax effect of each adjustment individually

	Gross	Tax	Net
Net income (GAAP)	1,000		1,000
Asset impairment	100	21 ¹	79
Inventory write-down	50	11 ¹	39

	Gross	Tax	Net
One-time tax expense (benefit) items	-	(150) ²	(150)
Adjusted earnings (non-GAAP)	1,150		968

Notes:

1. Tax effect was calculated using the Company's statutory rate of 21%.
2. Represents the release of a significant unrecognized tax benefit liability.

Either presentation may be appropriate providing the gross amount of the individual adjustments and tax effect are disclosed. Further, because the non-GAAP financial measure of adjusted net income is a performance measure, the registrant must clearly explain how it determined the current and deferred tax effects.

5.6 Pension adjustments

Given the complex nature and number of components in pension accounting, the SEC staff have stressed the importance of clearly labeling and disclosing non-GAAP financial measures that reflect adjustments for pension benefits.

Question 5.6.10 What disclosures are generally appropriate for a pension adjustment in a non-GAAP financial measure?

Interpretive response: An adjustment to a non-GAAP financial measure labeled as a 'pension adjustment' is considered inadequate without describing: [\[2013 AICPA Conf\]](#)

- what the adjustment represents; and
- what its basis is in the GAAP financial statements.

Question 5.6.20 Is disclosure of a non-GAAP adjustment for 'noncash pension expense' appropriate?

Interpretive response: Generally, no. The SEC staff have expressed concern that a non-GAAP adjustment such as 'noncash pension expense' might be confusing. This is because noncash pension expense does not accurately describe pension costs, as pensions generally settle in cash. [\[2013 AICPA Conf\]](#)

Question 5.6.30 What disclosures are appropriate for a pension adjustment in a non-GAAP financial measure that excludes actuarial gains or losses?

Interpretive response: Non-GAAP adjustments that eliminate actuarial gains or losses should be clearly labeled and disclosed. The SEC staff have expressed concern that registrants may adjust the non-GAAP amount to include the expected return instead of the actual return, even though these returns may differ significantly.

If a registrant presents these non-GAAP disclosures, the SEC staff expect a statement that the GAAP amounts reflect:

- the immediate recognition of all actuarial gains and losses in the income statement while the non-GAAP amount does not; and
- the actual return of \$X and Y% along with the corresponding non-GAAP measures.

The SEC staff have provided an example of a registrant that immediately recognized actuarial gains and losses and presented a non-GAAP financial measure that eliminated the actual return on plan assets from operating income. Although the registrant's actual return on plan assets was a loss of 3% and the expected return was a gain of 8%, the registrant adjusted its GAAP operating income by 11% – i.e. the difference between the expected return and the actual return. The SEC staff observed that this type of non-GAAP financial measure can be confusing and encouraged disclosing that the GAAP measure reflects an actual loss on return of plan assets of 3% (and dollar amount), and that the non-GAAP measure reflects the expected return of 8% (and \$ amount). [\[2013 AICPA Conf\]](#)

Example SEC comment

The following is an SEC comment regarding presentation of a non-GAAP financial measure that excludes an adjustment for noncash actuarial loss (gain).

We note that your non-GAAP measures include an adjustment for the noncash actuarial loss (gain) on benefit plans, which represent mark-to-market adjustments recorded in the fourth quarter of each respective year. For any future presentation of a non-GAAP measure that includes this adjustment, please expand your disclosures to address the following:

- Expand your disclosures to clearly state what the adjustment represents in the context of your pension accounting policy. For example, you should clarify how you account for these actuarial losses in your historical financial statements;
- Provide quantitative context for the actual and expected plan asset returns.

Specifically, please disclose the actual return on plan assets amount and corresponding percentage that has been removed in arriving at the non-GAAP financial measure as well as the expected return on plan assets amount and related percentage that is now reflected in the non-GAAP

financial measure; and expand your disclosures to comprehensively address why providing non-GAAP financial measures which adjust for these actuarial gains and losses provides useful information to investors.

5.7 Constant currency presentation

Constant currency is the method used to eliminate the effects of exchange rate fluctuations when calculating the financial performance of a registrant's international operations.

Question 5.7.10 Are amounts presented in constant currency non-GAAP financial measures?

Interpretive response: Yes. Amounts presented in constant currency are considered non-GAAP financial measures and should be accompanied by: [C&D] 104.06]

- disclosure of the historical amounts and the amounts in constant currency; and
 - a description of the process for calculating the constant currency amounts and the basis of presentation.
-

Example 5.7.10 Presenting constant currency amounts

Registrant includes in its Form 10-K a table that breaks down its revenues by geographic locations, under the requirements of Item 1 of Form 10-K. In this tabular disclosure, Registrant presents the amount in constant currency by adjusting its GAAP revenue measure for its international operations to exclude the effects of changes in foreign exchange rates associated with the current fiscal year. The table includes the related foreign currency effect for the period. Registrant also uses this tabular disclosure of revenue by location to show changes in revenue derived from increases in sales volume, prices and exchange rates from period to period as part of its MD&A disclosures.

Registrant's presentation of revenues by location, as adjusted for foreign exchange, is a non-GAAP financial measure subject to the provisions of Regs G and S-K Item 10(e). Therefore, Registrant complies with the reconciliation requirements of Regs G and S-K Item 10(e) by including the historical amounts and the amounts in constant currency, accompanied by a clear disclosure of the method used to calculate the constant currency amounts.

5.8 Normalized market prices

Certain non-GAAP financial measures may include a normalized market price measure with the purpose of eliminating the effect of commodity price volatility.

Question 5.8.10 Are normalized market price non-GAAP financial measures permitted?

Interpretive response: Generally, no due to the subjectivity involved in determining a 'normal' market price. The SEC staff have stated that they object to the use of a non-GAAP financial measure adjusting sales to eliminate 'drastic' declines (or increases) in commodity prices, which is typically viewed as a tailored accounting principle (see [Question 4.2.50](#)). Underlying volatility in commodity prices makes it challenging to identify what constitutes a 'normal price', and therefore the amount of the adjustment. The SEC staff noted that the measure is typically included only when commodity prices moved in a direction that negatively affected reported results. [\[2015 AICPA Conf\]](#)

Example SEC comment

The following is an SEC comment regarding presentation of a normalized market price non-GAAP financial measure.

We note disclosure in which you state your non-GAAP price cash margin is normalized for changes in commodity prices across time periods. Utilization of 20X1 as the base year could be interpreted to suggest that you expect commodity prices to recover in the near future. Tell us how you determined calculating your measure utilizing 20X1 commodity prices is useful, and why you believe 20X1 is the appropriate base year as opposed to other prior periods. In addition, indicate in your response your expectation for determining the base year in future presentations of this non-GAAP measurement.

5.9 System-wide revenues

System-wide revenues is a non-GAAP financial measure used by some registrants when there is similar economic activity that may be reflected in the financial statements in different ways.

For example, a restaurant franchisor that also owns its own restaurants and receives fees from its franchisees may wish to present the revenues of the franchisees and its owned restaurant operations as a measure generally referred to as system-wide revenues.

In some circumstances, investors find a system-wide measure useful in evaluating trends in the strength of a brand.

Question 5.9.10 Are system-wide non-GAAP financial measures permitted?

Interpretive response: Yes. The SEC staff allow system-wide non-GAAP financial measures to be presented when all other non-GAAP requirements are met and the measure is accompanied by appropriate disclosure (see [chapter 4](#)).

A registrant may present system-wide sales or sales growth as a non-GAAP financial measure in a tabular disclosure. The tabular disclosure is to be presented in addition to the disclosures noted in [chapter 4](#).

Example SEC comments

The following are SEC comments regarding presentation of system-wide non-GAAP financial measures.

Comment 1: Measure presented with inadequate disclosure

We note that you disclose that system-wide sales for fiscal 20X1 were \$100 million.

Please note that we consider this measure to be a non-GAAP financial measure and in this regard should be accompanied by disclosure that this amount is inclusive of both company-owned and franchised-owned stores, and that your total revenue in the financial statements is limited to those of company-owned restaurants and royalties from your franchises. Please revise accordingly.

Comment 2: Measure presented with inadequate disclosure

We note your disclosure of system-wide sales throughout the 10-K. Since system-wide sales include sales by franchisees that are not your revenues and you did not generate such revenues, please provide disclosure that adequately defines system-wide sales and clearly states this is an operating measure not in accordance with GAAP and these sales are not included in your financial statements. Your presentation should be balanced with relevant GAAP information. Form 10-Qs and 8-K earnings releases, as applicable, should be similarly revised.

5.10 REIT reporting

5.10.10 Funds from operations (FFO)

FFO is a financial measure widely reported by real estate entities.

Question 5.10.10 Are FFO non-GAAP financial measures permitted?

Interpretive response: Yes.

The Staff accepts National Association of Real Estate Investment Trusts' (Nareit®) definition of FFO as a performance measure and does not object to its presentation on a per-share basis (see question 4.7.60. [\[C&DI 102.01\]](#))

Although adjustments to the definition used by Nareit are not prohibited, any adjustments must comply with Regs G and S-K Item 10(e) and the title must

reflect that it is an adjusted form of the non-GAAP financial measure (e.g. Adjusted FFO). Adjustments made to FFO must comply with the requirements for a performance measure or a liquidity measure, depending on the nature of the adjustments, some of which may trigger the prohibition on presenting this measure on a per-share basis. [C&DI 102.02]

5.10.20 Pro rata information

Question 5.10.20 Is the presentation of pro rata information consistent with the C&DIs?

Interpretive response: In September 2016, Nareit released an alert, *Reporting Pro-Rata Information*, which provides guidance on presenting pro rata financial information. The alert was prompted by comments made by a representative of the SEC’s Division of Corporation Finance that disclosure of certain pro rata financial information may not comply with the C&DIs.

For example, the staff would object to the full presentation of financial statements on a pro rata basis because this could be viewed as applying a tailored accounting principle (see [section 4.3](#)). Additionally, including a non-GAAP income statement may violate the equal or greater prominence requirement (see [section 4.5.30](#)).

Nareit discussed the matter with the SEC staff and believes the SEC staff would not object to the example presentation provided in the alert (see [Example 5.10.10](#)). [[Nareit Alert: 9/30/16](#)]

Example 5.10.10 REIT reporting of pro rata information

The following is an excerpt from the Nareit Alert, [Reporting Pro-Rata Information](#).

Excerpt from Nareit Alert

Nareit understands the SEC staff would not object to the following presentation of elements of pro rata financial statements.

Elements of Pro-Rata Statement of Operations

	Noncontrolling Interest Share of Consolidated Ventures	Company Share of Unconsolidated Ventures
Minimum rent	-	-
Overage rent	-	-
Tenant reimbursements	-	-
Other income	-	-

Property operating expenses	-	-
Depreciation and amortization	-	-
Real estate taxes	-	-
Repairs and maintenance	-	-
Advertising and promotion	-	-
Provision for credit losses	-	-
Other	-	-
Interest expense	-	-

Elements of Pro-Rata Balance Sheet

	Noncontrolling Interest Share of Consolidated Ventures	Company Share of Unconsolidated Ventures
Investment properties, at cost	-	-
Less – accumulated depreciation	-	-
Cash and cash equivalents	-	-
Tenant receivables and accrued revenue, net	-	-
Investment in unconsolidated entities, at equity	-	-
Deferred costs and other assets	-	-
Mortgage and unsecured indebtedness	-	-
Accounts payable and accrued expenses	-	-
Other liabilities	-	-
Commitments and contingencies	-	-
Limited partners’ preferred interest in Operating Partnership	-	-

Additionally, Nareit notes the following as it pertains to the presentation of pro rata information.

- The consolidated GAAP financial statements may not be reported on the same table with the pro rata information.

- The elements shown in this illustration of reporting pro rata information may be different for each company's facts and circumstances.
 - No totals or subtotals should be presented.
 - Analysts could deduct the noncontrolling interest share of consolidated ventures from the consolidated amounts.
 - Analysts could add the company share of unconsolidated ventures to the consolidated amounts.
-

6. Earnings releases and similar announcements

Detailed contents

6.1 How the SEC Rules work

6.2 General requirements

Questions

Question 6.2.10 Does Item 2.02 Form 8-K apply to public disclosure of earnings estimates for future or ongoing fiscal periods?

Question 6.2.20 Must earnings information presented by webcast or other nonwritten communication be furnished on an Item 2.02 Form 8-K?

6.3 Furnished Item 2.02 Form 8-K

Questions

Question 6.3.10 What are the requirements for presenting a non-GAAP financial measure on a furnished Item 2.02 Form 8-K?

Question 6.3.20 Where are the non-GAAP disclosures presented?

6.4 Filed Item 2.02 Form 8-K

6.1 How the SEC Rules work

Earnings releases and similar announcements are *furnished* to the SEC on an Item 2.02 Form 8-K. However, a registrant may choose to *file* the form. The requirements differ depending on whether the form is furnished versus filed.

Furnish Form 8-K	Comply with Reg G and Instruction 2 to Item 2.02 Form 8-K.
File Form 8-K	Comply with Reg G, Reg S-K Item 10(e) and Instruction 2 to Item 2.02 Form 8-K.

Exemption: There is an exemption from the requirement to furnish a Form 8-K when earnings information is presented by webcast or other nonwritten communication. There are conditions attached to the exemption.

6.2 General requirements

Item 2.02 of Form 8-K requires that a domestic registrant *furnish* to the SEC all releases or announcements disclosing material nonpublic financial information about completed annual or quarterly periods that it has not previously disclosed. A domestic registrant may decide to *file* the Item 2.02 Form 8-K, which has other implications and disclosure requirements.

When a registrant presents non-GAAP financial measures in an Item 2.02 Form 8-K, Reg G applies to that information, whether the Form 8-K is furnished or filed. The requirements of Reg G are discussed in [chapter 2](#). [[Form 8-K Item 2 \(Instr 2\)](#)]

Question 6.2.10 Does Item 2.02 Form 8-K apply to public disclosure of earnings estimates for future or ongoing fiscal periods?

Interpretive response: It depends. Item 2.02 Form 8-K applies to public disclosure of earnings estimates for future or ongoing fiscal periods if those estimates are included in a public announcement or release of material nonpublic information related to a completed annual or fiscal quarter. Otherwise, the form does not apply to earnings estimates for future or ongoing fiscal periods. [[FR-65.II.C.1, C&DI 105.06](#)]

For example, a press release announcing results of operations for the just completed fiscal quarter, including expected adjusted earnings (a non-GAAP financial measure) would be subject to Item 2.02 of Form 8-K because it contains material, nonpublic information about the registrant's results of operations for a completed fiscal period. The adjusted earnings range is a non-GAAP financial measure, and therefore is subject to Item 2.02 of Form 8-K. [[C&DI 105.06](#)]

Question 6.2.20 Must earnings information presented by webcast or other nonwritten communication be furnished on an Item 2.02 Form 8-K?

Interpretive response: Not necessarily. Earnings information presented by webcast or other nonwritten communication need not be furnished on an Item 2.02 Form 8-K if certain criteria are met (see [section 3.3.50](#)).

6.3 Furnished Item 2.02 Form 8-K

Reg G and Instruction 2 to Item 2.02 apply to non-GAAP financial measures in a furnished Item 2.02 Form 8-K.

Question 6.3.10 What are the requirements for presenting a non-GAAP financial measure on a furnished Item 2.02 Form 8-K?

Interpretive response: Reg G states that a non-GAAP financial measure must not be misleading and requires the presentation of, and a reconciliation from, the non-GAAP financial measure's most directly comparable GAAP measure. Instruction 2 to Item 2.02 requires a registrant to include certain disclosures when it furnishes non-GAAP financial measures in Item 2.02 information.

The disclosures are the same as those addressed in [chapter 4: \[Form 8-K Item 2.02 \(Instr 2\)\]](#)

- a presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented based on GAAP;
- a reconciliation of the non-GAAP financial measure from the most directly comparable GAAP financial measure;
- a statement disclosing the reasons why management believes the non-GAAP financial measure provides useful information to investors about the registrant's financial condition and results of operations; and
- to the extent material, a statement disclosing the additional purposes, if any, for which management uses the non-GAAP financial measure.

A registrant is prohibited from presenting a per-share measure of liquidity as a non-GAAP financial measure (see [section 4.7.50](#)), but the other prohibitions discussed in [section 4.7](#) do not apply to a furnished Item 2.02 Form 8-K.

Question 6.3.20 Where are the non-GAAP disclosures presented?

Interpretive response: The registrant should include the release or announcement as an exhibit to the Form 8-K and either add the disclosures to the release or announcement or include them in the Form 8-K.

The SEC staff have objected to discussion of measures calculated in accordance with registrants' debt covenants in earnings releases, indicating that registrants should limit discussion of these measures to the liquidity section of a filing (e.g. Form 10-K or Form 10-Q). Specifically and notwithstanding C&DI 102.09, which addresses the disclosure of material debt covenants, if such disclosures appear to present the covenant measure as an indicator of performance rather than liquidity (e.g. highlighting it in the earnings release, comparing it to prior-period results, and analyzing it like measures of a registrant's performance) and that measures does not comply with the non-GAAP rules, the SEC staff will likely object. See [section 5.2.30](#) for requirements for disclosures related to material items affecting liquidity. [[Regs Comm 6/2024](#)]

6.4 Filed Item 2.02 Form 8-K

A registrant may voluntarily elect to file the Item 2.02 Form 8-K with the SEC. In these instances, Regs G and S-K Item 10(e) apply. Therefore, all of the guidance in [chapter 4](#) is relevant, including the prohibitions in [section 4.7](#), as well as the guidance in [section 6.3](#).

7. Foreign private issuers (FPIs)

Detailed contents

7.1 How the SEC Rules work

7.2 Reg G and an FPI

Questions

Question 7.2.10 What are the conditions for exempting an FPI's public announcements that contain non-GAAP financial measures from Reg G requirements?

Question 7.2.20 How does the exemption apply to Canadian registrants?

7.3 Reg S-K Item 10(e) and an FPI

7.3.10 Furnished Form 6-K exemption

7.3.20 Other exemptions from Reg S-K Item 10(e)

Questions

Question 7.3.10 Is an FPI subject to Reg S-K Item 10(e) if it files a Form 6-K?

Question 7.3.20 Can an FPI incorporate by reference into a registration statement only those portions of a furnished press release that do not include non-GAAP financial measures?

Question 7.3.30 When is a measure 'expressly permitted' by a standard-setter?

Question 7.3.40 Does the exemption from Reg S-K Item 10(e) for segment measures apply to disclosures required by IFRS 8 regarding operating segments?

Question 7.3.50 Are management-defined performance measures (MPMs) disclosed under IFRS 18 exempt from Reg S-K Item 10(e)?

7.1 How the SEC Rules work

Non-GAAP financial measures disclosed by FPIs are subject to the provisions of Regs G and S-K Item 10(e), unless specifically exempt.

Regulation	Exemption
Reg G	<ul style="list-style-type: none"> • Public announcements are exempt if certain conditions are met. • Canadian registrants filing Form 40-F under the Multi-Jurisdictional Disclosure System (MJDS) are not subject to the requirements.
Reg S-K Item 10(e)	<ul style="list-style-type: none"> • Investment companies are exempt. • Canadian registrants filing Form 40-F under MJDS are exempt. • Non-GAAP financial measures furnished on Form 6-K are exempt. • Non-GAAP financial measures are exempt from the prohibitions in Reg S-K Item 10(e)(1)(ii) (see section 4.7) if certain conditions are met (e.g. measure is required or expressly permitted by the FPI's home jurisdiction accounting standard-setter).

7.2 Reg G and an FPI

Reg G applies to FPIs, except to public announcements that include non-GAAP financial measures (e.g. information furnished in a Form 6-K) if those announcements meet certain conditions. Additionally, Canadian registrants filing Form 40-F under the MJDS are not subject to the requirements. [G Rule 100(c), FR-65.II.B.1.b, C&DI 106.04]

Question 7.2.10 What are the conditions for exempting an FPI's public announcements that contain non-GAAP financial measures from Reg G requirements?

Interpretive response: For an FPI's public announcement that contains non-GAAP financial measures to be exempt from Reg G requirements: [G Rule 100(c)(1) – (c)(3)]

- the issuer's securities must be listed or quoted on a securities exchange or inter-dealer quotation system outside the US;
- the non-GAAP financial measure and the most comparable GAAP financial measure must not be calculated and presented based on US GAAP; and
- the disclosure must be made outside the US, or must be included in a written communication that is released by or on behalf of the FPI outside the US.

The conditions for exemption are met even if: [G Rule 100 (N2)]

- a written communication is released in the US, as well as outside the US, if the US communication is released contemporaneously with or after the outside release and is not otherwise targeted to the US market;
- foreign or US journalists or other third parties have access to the information;
- the information appears on one or more websites maintained by the registrant, if the websites, taken together, are not available exclusively to, or targeted at, persons located in the US; or
- following the disclosure or release of the information outside the US, the information is included under cover of a Form 6-K furnished to the SEC.

The SEC considers the exemption from the provisions of Reg G to be met even though the information containing a non-GAAP financial measure is readily obtainable by US investors, if the information is not specifically targeted at US investors. The exemption applies even when the FPI furnishes the information to the SEC in a Form 6-K. [G Rule 100 (N2)]

Question 7.2.20 How does the exemption apply to Canadian registrants?

Interpretive response: The exemption from Reg G and Reg-S-K Item 10(e) (see [section 7.3](#)) applies to any non-GAAP financial measure included in a Form 40-F filed by a Canadian registrant that files under MJDS, even though the Form 40-F may include a US GAAP-based, non-GAAP financial measure. The exemption even applies if a registrant files a non-MJDS Securities Act registration statement that incorporates by reference the Form 40-F. However, any other public disclosure of a non-GAAP financial measure by a Canadian registrant is subject to the provisions of Reg G unless the limited exemption for public announcements (see [Question 7.2.10](#)) applies. [FR-65.II.B.1.b.FN 40, C&DI 106.04]

7.3 Reg S-K Item 10(e) and an FPI

Reg S-K Item 10(e) applies to non-GAAP financial measures included in filings with the SEC by foreign filers that file on Form 20-F, except registered investment companies. Further, Reg S-K Item 10(e) does not apply to Canadian registrants filing on Form 40-F under MJDS.

By specific reference to Reg S-K Item 10(e), Form 20-F prescribes conditions for including non-GAAP financial measures in filings presented on that form. Therefore, non-GAAP financial measures presented in a filing with the SEC by an FPI that file on Form 20-F must comply with the conditions and disclosure provisions in S-K Item 10(e).

However, there are two limited exemptions.

- The regulation does not apply to a non-GAAP financial measure on a *furnished* Form 6-K (see [section 7.3.10](#)).
- The prohibitions on presenting non-GAAP financial measures in S-K Item 10(e)(1)(ii) (see [section 4.7](#)) do not apply if certain conditions are met (see [section 7.3.20](#)).

There are also two types of FPIs that are from the Reg S-K 10(e) requirements:

- registered investment companies; and
- Canadian registrants filing on Form 40-F under MJDS.

7.3.10 Furnished Form 6-K exemption

Form 6-K is used by an FPI when providing information to be made public that is required in the home jurisdiction. The information on Form 6-K is typically furnished rather than filed with the SEC, similar to the furnishing of information under Item 2.02 of Form 8-K. Because the information on Form 6-K is furnished rather than filed, the provisions of Reg S-K Item 10(e) do not apply to any non-GAAP financial measures presented on that Form 6-K. An FPI may elect to file a Form 6-K.

Question 7.3.10 Is an FPI subject to Reg S-K Item 10(e) if it files a Form 6-K?

Interpretive response: If an FPI files (as opposed to furnishes) its Form 6-K with the SEC and incorporates it by reference into a registration statement, prospectus or annual report, the provisions of S-K Item 10(e) apply to the information filed on the Form 6-K. Further, as described in [section 7.2](#), Reg G applies to the information furnished on Form 6-K if the conditions for the limited exemption are not met. [\[FR-65.FN 39, FN 40, C&DI 106.03\]](#)

Question 7.3.20 Can an FPI incorporate by reference into a registration statement only those portions of a furnished press release that do not include non-GAAP financial measures?

Interpretive response: Yes. An FPI may decide to incorporate by reference into a Securities Act registration statement only those portions of the furnished press release that do not include the non-GAAP financial measures. When an FPI wishes to incorporate by reference portions of the earnings release provided on Form 6-K, it should either: [\[C&DI 106.02\]](#)

- specify in the Form 6-K those portions of the earnings release to be incorporated by reference; or
- furnish two Form 6-K reports – one that contains the full press release and another that contains the portions to be incorporated (indicating its incorporation by reference).

The SEC staff believe that the second approach (i.e. using two reports on Form 6-K) may provide more clarity for investors in most circumstances, and notes that an entity must consider whether its disclosure becomes misleading if it incorporates only a portion of its press release. [\[C&DI 106.02\]](#)

7.3.20 Other exemptions from Reg S-K Item 10(e)

A non-GAAP financial measure otherwise prohibited under Reg S-K Item 10(e)(1)(ii) is permitted in a filing by an FPI if it: [\[S-K Item 10\(e\) note to \(e\)\]](#)

- relates to GAAP used in the FPI's primary financial statements included in filings with the SEC (e.g. IFRS Accounting Standards);
- is required or expressly permitted by the standard-setter responsible for establishing the GAAP used in the FPI's primary financial statements filed with the SEC (see [Question 7.3.30](#)); and
- is included in the annual report prepared by the FPI for use in the jurisdiction in which it is domiciled, incorporated or organized, or for distribution to its security holders.

Question 7.3.30 When is a measure ‘expressly permitted’ by a standard-setter?

Interpretive response: A measure otherwise prohibited by S-K Item 10(e)(1)(ii) is permitted in filings with the SEC if the measure is required or ‘expressly permitted’ by the standard-setter for the registrant’s primary financial statements and it is included in the registrant’s annual report or financial statements used in its home country. [C&DI 106.01]

A measure is expressly permitted if the standard-setter responsible for establishing the GAAP used in the FPI’s primary financial statements filed with the SEC clearly and specifically identifies it as an acceptable measure. The concept of expressly permitted can also be demonstrated with *explicit acceptance* of a presentation by the primary securities regulator in the FPI’s home country jurisdiction or market. Explicit acceptance by the regulator includes: [FR-65.II.B.1.b, C&DI 106.01]

- published views of the regulator or members of the regulator’s staff; or
- a letter from the regulator or its staff to the FPI indicating the acceptance of the presentation, which would be provided to the SEC staff on request.

Question 7.3.40 Does the exemption from Reg S-K Item 10(e) for segment measures apply to disclosures required by IFRS 8 regarding operating segments?

Background: Non-GAAP financial measures do not include financial measures that are required or expressly permitted to be disclosed by GAAP. This means segment measures required by Topic 280 are not non-GAAP financial measures (unless the registrant elects to report multiple measures of segment profit or loss under Topic 280 – see [section 5.3](#)) and therefore are exempt from Reg. S-K Item 10(e). [C&DI 104.01]

Interpretive response: We believe this exemption related to Topic 280 also applies to disclosures required by IFRS 8 (operating segments). In other words, the measure of segment profit or loss used by the CODM that is most consistent with the measurements principles in IFRS Accounting Standards would be considered required by those Standards and therefore not considered a non-GAAP financial measure.

See section 5.2 in KPMG Handbook, [IFRS® compared to US GAAP](#), for an overview of the guidance in IFRS 8.

Question 7.3.50 Are management-defined performance measures (MPMs) disclosed under IFRS 18 exempt from Reg S-K Item 10(e)?

Background: In April 2024, IFRS 18 (presentation and disclosure in financial statements) was issued and will replace IAS 1 (presentation of financial statements). IFRS 18 affects the presentation of primary financial statements

and financial statement footnotes and requires MPMs to be included in a single footnote to the consolidated financial statements. Specifically, an MPM is a subtotal of income and expenses that an entity uses in public communications outside financial statements to communicate to users of financial statements management's view of an aspect of the financial performance of the entity as a whole. [\[IFRS 18.117\]](#)

FPIs reporting under IFRS Accounting Standards as issued by the IASB will have to adopt IFRS 18 for annual periods starting on or after January 1, 2027 with retrospective application. Early adoption is permitted.

Interpretive response: Yes.

After adoption, FPIs will disclose information about measures that meet the definition of an MPMs in their financial statement notes, as required by IFRS 18. The SEC staff have observed that MPMs for which disclosure is required are excluded from the definition of a non-GAAP financial measure under S-K Item 10(e)(5) when disclosed in the financial statement notes. [\[IPTF 5/2024\]](#)

However, IFRS 18 identifies certain measures that are excluded from the definition of an MPM (see IFRS 18.118) as well as any measures that IFRS Accounting Standards specifically require to be presented or disclosed. The SEC staff observed that when such measures are used in an entity's public communications outside of the financial statements, they would be subject to the SEC's non-GAAP requirements, as applicable, in every instance such measures are communicated. [\[IPTF 5/2024\]](#)

8. Controls and non-GAAP financial measures

Detailed contents

8.1 How the SEC Rules work

8.2 Differences between ICFR and DCP

Questions

Question 8.2.10 What are DCPs?

Question 8.2.20 Does ICFR play any role in monitoring non-GAAP financial measures?

Question 8.2.30 What other considerations related to ICFR and DCPs should registrants evaluate in complying with the requirements of Topic 280?

8.3 Management's responsibilities related to non-GAAP financial measures

Question

Question 8.3.10 What are best practices for fulfilling management's responsibilities related to non-GAAP financial measures?

8.4 Key performance indicators and metrics

Questions

Question 8.4.10 What are key performance indicators or other metrics?

Question 8.4.20 What disclosures are required for KPIs?

Question 8.4.30 What disclosures are appropriate when KPIs and other metrics change?

Question 8.4.40 What DCPs are appropriate for KPIs?

8.5 External auditor responsibility related to non-GAAP financial measures

Questions

Question 8.5.10 Are incremental procedures required over non-GAAP financial information other than reading the information for consistency?

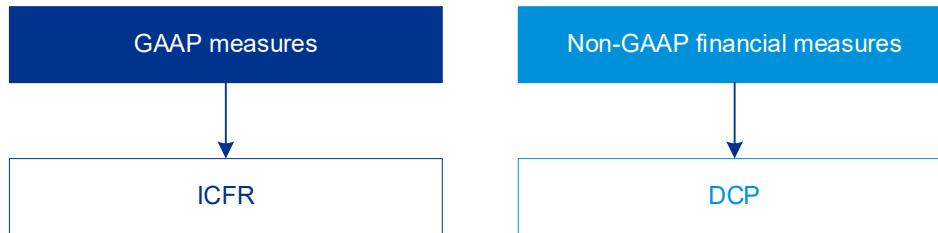
Question 8.5.20 What are specific considerations for auditors in evaluating a registrant's compliance with the requirements of Topic 280?

Question 8.5.30 Is an external auditor responsible for performing specific procedures related to a registrant's earnings releases, investor presentations, or other external communications?

Question 8.5.40 Does an external auditor have any responsibilities regarding non-GAAP financial measures in interim financial statements?

8.1 How the SEC Rules work

Management is responsible for preparing reliable non-GAAP financial measures. The importance of this responsibility has been augmented by the scrutiny and attention that the SEC places on these measures. While an investor may rely on both GAAP and non-GAAP financial measures provided by a registrant to make its decisions, only the GAAP information falls under the registrant's ICFR; see KPMG Handbook, [Internal control over financial reporting](#). The preparation of non-GAAP financial measures falls under a registrant's Disclosure Controls and Procedures (DCPs).



8.2 Differences between ICFR and DCP

Question 8.2.10 What are DCPs?

Interpretive response: DCPs are broadly defined by the SEC as controls and procedures that are designed to ensure that information required to be disclosed is recorded, processed, summarized and reported within the time periods specified by SEC rules. Management must evaluate DCPs on a quarterly basis and disclose in the Form 10-K or Form 10-Q whether, based on the evaluation, the DCPs were effective at the end of each quarter. [CFR 240.13a – 15]

Question 8.2.20 Does ICFR play any role in monitoring non-GAAP financial measures?

Interpretive response: The objective of ICFR is limited to providing reasonable assurance about the reliability of the financial statements and the preparation of the financial statements in accordance with GAAP. The scope of ICFR, as defined in the SEC’s rules, does not extend to any other forms of financial reporting.

Because of management’s responsibilities under DCPs to prepare accurate financial information, such as non-GAAP financial measures, management may wish to extend its application of ICFR beyond the financial statements to earnings releases, other parts of Form 10-K or Form 10-Q (e.g. MD&A), and other reports. However, management’s assessment of ICFR and the accompanying external auditor’s ICFR report (if applicable) cover only those aspects of internal control that relate to financial statements and the accompanying notes to the financial statements.

Example SEC enforcement action

The following pertains to an SEC enforcement action.

In March 2023, the Enforcement Division announced a settlement order (the Order) with a registrant for disclosing misleading non-GAAP financial measures over multiple periods as well as violating SEC regulations requiring company-wide disclosure controls and procedures.

The Order stemmed from disclosures of non-GAAP financial performance measures that excluded expenses associated with a specific business combination, including costs directly related to that transaction. The Order indicated that, over the course of multiple reporting periods, the registrant negligently misclassified expenses into this adjustment that were unrelated to the transaction, thereby materially inflating the non-GAAP financial performance measures. During this time, the registrant offered and sold securities, both through share-based compensation and through a public debt offering.

The Order finds the registrant:

- had ineffective disclosure controls and procedures in place specific to its non-GAAP financial measures;
- had insufficient disclosure controls and procedures concerning the review, approval and classification of costs used in the adjustment; and
- benefited in the offer or sale of securities by means of an untrue statement of material fact.

The Order specifically cites that both the controllership and the disclosure committee, or equivalent, were at fault.

The registrant ultimately agreed to pay a penalty to settle charges for violating the rules and was then subject to a 120-day compliance certification period with the Enforcement Division.

Question 8.2.30 What other considerations related to ICFR and DCPs should registrants evaluate in complying with the requirements of Topic 280?

Interpretive response: Ahead of the implementation of ASU 2023-07, the SEC staff delivered key reminders for registrants to consider in adopting the new requirements under Topic 280.

- A registrants should verify that its ICFR and disclosure controls and procedures are appropriately designed for segment disclosures. [\[2024 AICPA Conf\]](#)
- A registrants may elect to provide the incremental disclosures that would be required to comply with the SEC's non-GAAP rules in a location outside of the financial statements, such as its MD&A. However, if a registrant provides the required non-GAAP disclosures (e.g. the reconciliation and accompanying narrative disclosures) in the notes to its audited financial statements, any disclosures provided solely to comply with the SEC's non-GAAP rules may be labeled 'unaudited' (see AS 3105.11). This does not include the additional segment measures themselves, which are presented and disclosed in accordance with Topic 280. [\[Regs Comm 10/2024\]](#)

See [section 5.3](#) for additional considerations regarding the interplay between Topic 280 and the SEC's non-GAAP rules.

8.3 Management's responsibilities related to non-GAAP financial measures

The SEC staff have recommended that management routinely evaluate and document its population of non-GAAP financial measures. Specifically, management should understand and document how the registrant's non-GAAP financial measures are used, and why the non-GAAP financial measures are relevant and important to investors and other users. This information should be

communicated to and discussed with the audit committee and senior management. [2016 AICPA Conf]

The SEC staff stated that management should also consider how it fully incorporates the development and review of non-GAAP financial measures into its DCPs. Further, the SEC staff emphasized that audit committee members should seek to understand management's judgments related to the design, preparation and presentation of non-GAAP financial measures and how those measures might differ from other registrants. [2016 AICPA Conf]

Question 8.3.10 What are best practices for fulfilling management's responsibilities related to non-GAAP financial measures?

Interpretive response: Management should consider establishing a written policy around making non-GAAP financial measures transparent, consistent and comparable and implementing proactive disclosure controls and procedures that are responsive to these objectives. For example, the policy and related disclosure controls and procedures may address management's consideration of the following questions that are provided in the CAQ's publication, [Questions on Non-GAAP Measures: A Tool for Audit Committees](#).

Excerpt from CAQ publication¹

Transparency

1. What is the purpose of the non-GAAP measure? Would a reasonable investor be misled by the information?
2. Has the non-GAAP measure been given more prominence than the most directly comparable GAAP measure? For example, an earnings release headline or caption that may present a non-GAAP measure without the comparable GAAP measure.
3. How many non-GAAP measures have been presented? Is this necessary and appropriate for investors to understand performance?
4. Why has management selected this particular non-GAAP measure to supplement GAAP measures that are already established and consistently applied within its industry or across industries?
5. Does the company's disclosure provide substantive detail on the purpose and usefulness of the non-GAAP disclosure for investors?
6. How is the non-GAAP measure calculated? Does the disclosure clearly and adequately describe the calculation, as well as the reconciling items between the GAAP and non-GAAP measure?
7. How does management use the measure, and has that been disclosed? For example, is the measure linked to executive compensation?

¹ Reproduced with permission from the Center for Audit Quality.

8. Is the non-GAAP measure sufficiently defined and clearly labeled as non-GAAP? Could the title or description of the measure be confused with a GAAP measure?
9. Are any of the 'per-share' non-GAAP measures in substance per-share non-GAAP liquidity measures, which are prohibited, or could they be used as liquidity measures even if disclosed as a performance measure?
10. What are the tax implications of the non-GAAP measure? Does the calculation align with the tax consequences and the nature of the measure (i.e. performance vs. liquidity)?
11. Does the company have material agreements, like a debt covenant, that require compliance with a non-GAAP measure? Does the company disclose that?

Consistency

1. Are the non-GAAP measures presented by the company balanced? Do the measures eliminate similar items that affect both revenue and expense, or do they only eliminate one or the other?
2. Has the company presented this measure before? Has the company stopped presenting certain measures?
3. Has the method or nature of the inputs to the calculation changed since the last time presented? If so, why and have the comparable periods been revised consistently?
4. If the calculation has changed, are the changes adequately described? Is there a need to revise prior period measures for consistency and to avoid a potentially misleading presentation? Would they have been materially different such that the prior period calculations should be revised?
5. Is there a correlation between what the measure presents, and the company's actual results? For example, if a non-GAAP measure presents positive growth, does that correlate with the GAAP results of the company? If not, have those differences been clearly communicated to investors?
6. Have items characterized as nonrecurring, infrequent, or unusual occurred in the past two years? Are these items not reasonably likely to recur again in the next two years?

Comparability

1. Do other companies present this measure or similar measures? If not, why is this measure important for this company but not its peers?
2. Is management aware of differences in their calculation compared to other companies? Why are the calculations different?
3. If there are differences from peers, is the disclosure transparent about how the measure is calculated differently than peers?
4. Have any industry groups defined standard calculations that companies within the industry could follow in order to present more comparable measures to investors?

Other important questions

1. Who in management is responsible for the oversight of non-GAAP measures? Does management maintain a policy on non-GAAP measures? Does that policy address the calculation, presentation, and disclosure of these measures?
2. Has the disclosure committee reviewed the non-GAAP measures?

3. What is the source of the information used in the calculation? Are there adequate controls and oversight in place over both the calculation and disclosure of the measure?
4. How has management involved legal counsel on presentation and usage of non-GAAP measures and their compliance with SEC regulations?
5. Has management monitored SEC speeches and comment letters regarding non-GAAP measures and considered those in making its own presentation?
6. Is management aware of any others in the industry who have received an SEC comment letter about a particular non-GAAP measure, and, if so, have they considered that in reference to their disclosures as applicable?
7. Has internal audit been involved with non-GAAP measures? What feedback have they given management?

8.4 Key performance indicators and metrics

In January 2020, the SEC issued [Guidance on Key Performance Indicators and Metrics](#) to remind registrants of the requirements related to key performance indicators and metrics and how these requirements apply to those non-GAAP financial measures presented in MD&A.

Registrants often present a variety of financial and non-financial information in MD&A that management believes is important to present for a thorough understanding of the registrant to investors through the eyes of management. The specific measures and metrics considered necessary to disclose will vary by registrant and industry.

Question 8.4.10 What are key performance indicators or other metrics?

Interpretive response: Key performance indicators (KPIs) and other metrics are quantifiable financial or nonfinancial measures or qualitative factors the registrant believes are necessary to an understanding of its financial condition and/or results of operations. They include information used in the management of the business that management believes would be decision-useful to an investor and/or enhance a reader's understanding of MD&A. [FR-87]

They can relate to the registrant's industry or the macro-economic environment; they also can be specific to the registrant. Additionally, some metrics can be a combination of external and internal information. KPIs and other metrics can be based on GAAP or may be non-GAAP financial measures.

Common examples of KPIs or other metrics

- | | |
|---|--|
| <ul style="list-style-type: none"> • Same store sales • Revenue per subscriber • Number of stores • Number of subscribers | <ul style="list-style-type: none"> • Revenue • EBITDA • EBITDAX • Total deposits |
|---|--|

Examples of metrics could also include the observed effects of prior environmental or company-specific events on operations.

Question 8.4.20 What disclosures are required for KPIs?

Interpretive response: The SEC staff believe it is important for registrants that report such KPIs and metrics to be mindful of whether these items meet the SEC's definition of a non-GAAP financial measure and to proactively and thoughtfully address the relevant risks.²

Certain key performance and other metrics may be considered operating performance or statistical measures, which are excluded from the SEC's definition of non-GAAP financial measures. Therefore, KPIs may fall outside the scope of the SEC's non-GAAP rules (see section 2.2.40). [\[FR-65.II.A.2.b\]](#)

The SEC's definition of a non-GAAP financial measure also excludes financial information that does not in effect provide numerical measures that differ from the comparable GAAP measure. [\[FR-65.II.A.2.b\]](#)

Specific SEC guidance on KPI disclosures

In January 2020 the SEC published guidance on the disclosure of KPIs and other metrics in MD&A. The guidance reminds registrants to first consider whether an existing regulatory disclosure framework for the information applies (e.g. GAAP or the requirements discussed in this Handbook for non-GAAP financial measures). [\[FR-87\]](#)

However, even when such frameworks do not apply, the SEC would still expect registrants to consider whether additional disclosure or information may be necessary to prevent the KPI or other metric from being misleading and to provide adequate context for an investor's understanding.

Accordingly, the SEC would generally expect the following disclosures to accompany KPIs and other metrics, even when they are not in the scope of the non-GAAP rules: [\[FR-87\]](#)

- a clear definition of the metric and how it is calculated;
- a statement indicating the reasons why the metric provides useful information to investors; and
- a statement indicating how management uses the metric in managing or monitoring the performance of the business.

Registrants should also consider whether there are relevant estimates or assumptions underlying the KPI (or other metric) or its calculation, and whether disclosure of such items is necessary for it not to be materially misleading.

² [Advancing Our Capital Markets with High-Quality Information](#), May 2017, then Chief Accountant of the SEC.

Question 8.4.30 What disclosures are appropriate when KPIs and other metrics change?

Interpretive response: Changes in the methods of calculating a KPI or other metric from one period to the next without clear disclosure could be misleading to an investor's understanding. As a result, if such changes are made, the SEC would generally expect registrants to disclose the following additional information: [\[FR-87\]](#)

- the differences in the way the metric is calculated or presented compared to prior periods;
- the reasons for such changes;
- the effects of any such changes on the amounts or other information being disclosed and on amounts or other information previously reported; and
- such other differences in methodology and results that would reasonably be expected to be relevant to an understanding of the registrant's performance or prospects.

Depending on the significance of the change(s) in methodology and results, the registrant should consider whether it is necessary to recast prior metrics to conform to the current presentation and place the current disclosure in an appropriate context. [\[FR-87\]](#)

Question 8.4.40 What DCPs are appropriate for KPIs?

Interpretive response: Registrants should first understand the nature of the KPIs or metrics (i.e. determining whether they are operating/statistical measures or non-GAAP financial measures) and verify that adequate disclosure controls and procedures are in place (see [section 8.2](#)). These reporting processes for KPIs and metrics may require more steps than some GAAP processes, not fewer, because such reporting does not have the benefit of standard-setting due process that solicits stakeholder views on (1) a representationally faithful manner of reporting a particular event or transaction and (2) the types of disclosures needed by investors and required by GAAP. A registrant should look to its own policies, the audit committee and other stakeholders for input.

8.5 External auditor responsibility related to non-GAAP financial measures

An external auditor's responsibility related to non-GAAP financial measures is governed by PCAOB Auditing Standard (AS) 2710, Other Information in Documents Containing Audited Financial Statements. Under AS 2710, the auditor's responsibilities apply only to non-GAAP financial measures included in documents that contain the audit financial statements. Per AS 2710 an external auditor's responsibility is two-fold. [\[AS 2710.04 – .06\]](#)

- Read the other information (i.e. information contained in annual reports or other published documents that is incremental to the audited financial statements for which the independent auditor's report is issued thereon) and consider whether it, or the manner in which it is presented, is materially inconsistent with information, or the manner in which it is presented, in the audited financial statements; and if so, perform incremental procedures.
- In conjunction with reading the other information, perform incremental procedures if the auditor becomes aware of information believed to be a material misstatement of fact even if there is not a material inconsistency.

Question 8.5.10 Are incremental procedures required over non-GAAP financial information other than reading the information for consistency?

Interpretive response: No. If the external auditor does not believe that the non-GAAP financial measure is materially inconsistent with the audited financial statements and does not represent or contain a material misstatement of fact, it is not required to perform other procedures over the non-GAAP financial measure. [AS 2710.04 – .06]

Question 8.5.20 What are specific considerations for auditors in evaluating a registrant's compliance with the requirements of Topic 280?

Interpretive response: In conjunction with the release of ASU 2023-07 on segment reporting, the SEC staff provided a general reminder that auditors are responsible for auditing to US GAAP, and are not responsible for auditing registrants' compliance with the SEC non-GAAP rules, including the registrant's process to prepare disclosures of non-GAAP financial measures. [2024 AICPA Conf]

As it relates specifically to Topic 280, the SEC staff highlighted the following. [Regs Comm 10/2024]

- An audit includes assessing a registrant's disclosure of additional segment measures, including those not calculated in accordance with US GAAP, as well as any incremental disclosure relating to additional segment measures, as stipulated by Topic 280.
- An audit does not include evaluating a registrant's determination of whether an additional non-GAAP segment measure is considered 'misleading' under the SEC's non-GAAP rules, nor the incremental disclosures (e.g. the reconciliation and accompanying narrative disclosures) that are required by the SEC's non-GAAP rules.

See [section 5.3](#) for additional considerations regarding the interplay between Topic 280 and the SEC's non-GAAP rules.

Question 8.5.30 Is an external auditor responsible for performing specific procedures related to a registrant's earnings releases, investor presentations, or other external communications?

Interpretive response: No. Unless voluntarily engaged separately by the registrant's management to perform specific procedures that are governed by attestation standards, the external auditor has no responsibility under current PCAOB auditing standards to perform procedures related to earnings releases (whether furnished or filed), investor presentations or other communications – e.g. calls with analysts and information on the registrant's website.

Question 8.5.40 Does an external auditor have any responsibilities regarding non-GAAP financial measures in interim financial statements?

Interpretive response: Yes. AS 4105, Reviews of Interim Financial Information, contains guidance similar to AS 2710 about reading other information that accompanies interim financial information and considering whether that information, or the manner in which it is presented, is inconsistent with the interim financial information (see [Question 8.5.10](#)). [AS 4105.18(f)]

Appendix 1: Regulation G

Conditions for Use of Non-GAAP Financial Measures

Excerpt from Regulation G

§244.100 General rules regarding disclosure of non-GAAP financial measures

- (a) Whenever a registrant, or person acting on its behalf, publicly discloses material information that includes a non-GAAP financial measure, the registrant must accompany that non-GAAP financial measure with:
 - (1) A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and
 - (2) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (a)(1) of this section.
- (b) A registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.
- (c) This section shall not apply to a disclosure of a non-GAAP financial measure that is made by or on behalf of a registrant that is a foreign private issuer if the following conditions are satisfied:
 - (1) The securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
 - (2) The non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with generally accepted accounting principles in the United States; and
 - (3) The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant outside the United States.
- (d) This section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to §230.425 of this chapter, §240.14a-12 or §240.14d-2(b)(2) of this chapter or §229.1015 of this chapter.

Notes to §244.100:

1. If a non-GAAP financial measure is made public orally, telephonically, by Web cast, by broadcast, or by similar means, the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section will be satisfied if:
 - (i) The required information in those paragraphs is provided on the registrant's Web site at the time the non-GAAP financial measure is made public; and
 - (ii) The location of the web site is made public in the same presentation in which the non-GAAP financial measure is made public.
2. The provisions of paragraph (c) of this section shall apply notwithstanding the existence of one or more of the following circumstances:
 - (i) A written communication is released in the United States as well as outside the United States, so long as the communication is released in the United States contemporaneously with or after the release outside the United States and is not otherwise targeted at persons located in the United States;
 - (ii) Foreign journalists, U.S. journalists or other third parties have access to the information;
 - (iii) The information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; or
 - (iv) Following the disclosure or release of the information outside the United States, the information is included in a submission by the registrant to the Commission made under cover of a Form 6-K.

§244.101 Definitions.

This section defines certain terms as used in Regulation G (§§244.100 through 244.102).

- (a) (1) **Non-GAAP financial measure.** A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:
 - (i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
 - (ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.
- (2) A non-GAAP financial measure does not include operating and other financial measures and ratios or statistical measures calculated using exclusively one or both of:
 - (i) Financial measures calculated in accordance with GAAP; and
 - (ii) Operating measures or other measures that are not non-GAAP financial measures.
- (3) A non-GAAP financial measure does not include financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant.

- (b) **GAAP.** GAAP refers to generally accepted accounting principles in the United States, except that:
- (1) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and
 - (2) In the case of foreign private issuers that include a non-GAAP financial measure derived from a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of Regulation G to the disclosure of that measure.
- (c) **Registrant.** A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).
- (d) **United States.** United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

§244.102 No effect on antifraud liability.

Neither the requirements of this Regulation G (17 CFR 244.100 through 244.102) nor a person's compliance or non-compliance with the requirements of this Regulation shall in itself affect any person's liability under Section 10(b) (15 U.S.C. 78j(b)) of the Securities Exchange Act of 1934 or §240.10b-5 of this chapter.

Appendix 2: Regulation S-K Item 10(e)

Use of non-GAAP financial measures in Commission filings

Excerpt from Regulation S-K Item 10(e)

- (e) Use of non-GAAP financial measures in Commission filings.
 - (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:
 - (i) The registrant must include the following in the filing:
 - (A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);
 - (B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;
 - (C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and
 - (D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (e)(1)(i)(C) of this section; and
 - (ii) A registrant must not:
 - (A) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);
 - (B) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;

- (C) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;
 - (D) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11-01 through 210.11-03); or
 - (E) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and
- (iii) If the filing is not an annual report on Form 10-K or Form 20-F (17 CFR 249.220f), a registrant need not include the information required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-K or Form 20-F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.
- (2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:
- (i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of comprehensive income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
 - (ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.
- (3) For purposes of this paragraph (e), GAAP refers to generally accepted accounting principles in the United States, except that:
- (i) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and
 - (ii) In the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this paragraph (e) to the disclosure of that measure.
- (4) For purposes of this paragraph (e), non-GAAP financial measures exclude:
- (i) Operating and other statistical measures; and
 - (ii) Ratios or statistical measures calculated using exclusively one or both of:
 - (A) Financial measures calculated in accordance with GAAP; and
 - (B) Operating measures or other measures that are not non-GAAP financial measures.
- (5) For purposes of this paragraph (e), non-GAAP financial measures exclude financial measures required to be disclosed by GAAP,

Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements.

- (6) The requirements of paragraph (e) of this section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to §230.425 of this chapter, §240.14a-12 or §240.14d-2(b)(2) of this chapter or §229.1015 of this chapter.
- (7) The requirements of paragraph (e) of this section shall not apply to investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

Note to paragraph (e):

A non-GAAP financial measure that would otherwise be prohibited by paragraph (e)(1)(ii) of this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure relates to the GAAP used in the registrant's primary financial statements included in its filing with the Commission;
2. The non-GAAP financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements; and
3. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

Appendix 3: Instruction 2 to Item 2.02

The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (17 CFR 229.10(e)(1)(i)) shall apply to disclosures under this Item 2.02

Excerpt from Instruction 2 to Item 2.02

Item 2.02 Results of Operations and Financial Condition.

- (a) If a registrant, or any person acting on its behalf, makes any public announcement or release (including any update of an earlier announcement or release) disclosing material non-public information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period, the registrant shall disclose the date of the announcement or release, briefly identify the announcement or release and include the text of that announcement or release as an exhibit.
- (b) A Form 8-K is not required to be furnished to the Commission under this Item 2.02 in the case of disclosure of material non-public information that is disclosed orally, telephonically, by webcast, by broadcast, or by similar means if:
 - (1) the information is provided as part of a presentation that is complementary to, and initially occurs within 48 hours after, a related, written announcement or release that has been furnished on Form 8-K pursuant to this Item 2.02 prior to the presentation;
 - (2) the presentation is broadly accessible to the public by dial-in conference call, by webcast, by broadcast or by similar means;
 - (3) the financial and other statistical information contained in the presentation is provided on the registrant's website, together with any information that would be required under 17 CFR 244.100; and
 - (4) the presentation was announced by a widely disseminated press release, that included instructions as to when and how to access the presentation and the location on the registrant's website where the information would be available.

Instructions.

1. The requirements of this Item 2.02 are triggered by the disclosure of material non-public information regarding a completed fiscal year or quarter. Release of additional or updated material non-public information regarding a completed fiscal year or quarter would trigger an additional Item 2.02 requirement.
2. The requirements of paragraph (e)(1)(i) of Item 10 of Regulation S-K (17 CFR 229.10(e)(1)(i)) (or paragraph (h)(1)(i) of Item 10 of Regulation S-B (17 CFR 228.10(h)(1)(i)) in the case of a small business issuer) shall apply to disclosures under this Item 2.02.

3. Issuers that make earnings announcements or other disclosures of material non-public information regarding a completed fiscal year or quarter in an interim or annual report to shareholders are permitted to specify which portion of the report contains the information required to be furnished under this Item 2.02.
4. This Item 2.02 does not apply in the case of a disclosure that is made in a quarterly report filed with the Commission on Form 10-Q (17 CFR 249.308a) or an annual report filed with the Commission on Form 10-K (17 CFR 249.310).

(e)(1)(i) of Item 10 of Regulation S-K:

- (e) Use of non-GAAP financial measures in Commission filings.
 - (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:
 - (i) The registrant must include the following in the filing:
 - (A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP);
 - (B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;
 - (C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and
 - (D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (e)(1)(i)(C) of this section.

Appendix 4: Compliance & Disclosure Interpretations

Non-GAAP Financial Measures

Excerpt from C&DI

Last Update: December 13, 2022

These Compliance & Disclosure Interpretations ("C&DIs") comprise the Division's interpretations of the rules and regulations on the use of non-GAAP financial measures. The bracketed date following each C&DI is the latest date of publication or revision.

QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

Section 100. General

Question 100.01

Question: Can certain adjustments, although not explicitly prohibited, result in a non-GAAP measure that is misleading?

Answer: Yes. Certain adjustments may violate Rule 100(b) of Regulation G because they cause the presentation of the non-GAAP measure to be misleading. Whether or not an adjustment results in a misleading non-GAAP measure depends on a company's individual facts and circumstances.

Presenting a non-GAAP performance measure that excludes normal, recurring, cash operating expenses necessary to operate a registrant's business is one example of a measure that could be misleading.

When evaluating what is a normal, operating expense, the staff considers the nature and effect of the non-GAAP adjustment and how it relates to the company's operations, revenue generating activities, business strategy, industry and regulatory environment.

The staff would view an operating expense that occurs repeatedly or occasionally, including at irregular intervals, as recurring. [December 13, 2022]

Question 100.02

Question: Can a non-GAAP measure be misleading if it is presented inconsistently between periods?

Answer: Yes. For example, a non-GAAP measure that adjusts a particular charge or gain in the current period and for which other, similar charges or gains were not also adjusted in prior periods could violate Rule 100(b) of Regulation G unless the change between periods is disclosed and the reasons for it explained. In addition, depending on the significance of the change, it may be necessary to recast prior measures to conform to the current

presentation and place the disclosure in the appropriate context. [May 17, 2016]

Question 100.03

Question: Can a non-GAAP measure be misleading if the measure excludes charges, but does not exclude any gains?

Answer: Yes. For example, a non-GAAP measure that is adjusted only for non-recurring charges when there were non-recurring gains that occurred during the same period could violate Rule 100(b) of Regulation G. [May 17, 2016]

Question 100.04

Question: Can a non-GAAP measure violate Rule 100(b) of Regulation G if the recognition and measurement principles used to calculate the measure are inconsistent with GAAP?

Answer: Yes. By definition, a non-GAAP measure excludes or includes amounts from the most directly comparable GAAP measure. However, non-GAAP adjustments that have the effect of changing the recognition and measurement principles required to be applied in accordance with GAAP would be considered individually tailored and may cause the presentation of a non-GAAP measure to be misleading. Examples the staff may consider to be misleading include, but are not limited to:

- changing the pattern of recognition, such as including an adjustment in a non-GAAP performance measure to accelerate revenue recognized ratably over time in accordance with GAAP as though revenue was earned when customers were billed;
- presenting a non-GAAP measure of revenue that deducts transaction costs as if the company acted as an agent in the transaction, when gross presentation as a principal is required by GAAP, or the inverse, presenting a measure of revenue on a gross basis when net presentation is required by GAAP; and
- changing the basis of accounting for revenue or expenses in a non-GAAP performance measure from an accrual basis in accordance with GAAP to a cash basis. [December 13, 2022]

Question 100.05

Question: Can a non-GAAP measure be misleading if it, and/or any adjustment made to the GAAP measure, is not appropriately labeled and clearly described?

Answer: Yes. Non-GAAP measures are not always consistent across, or comparable with, non-GAAP measures disclosed by other companies. Without an appropriate label and clear description, a non-GAAP measure and/or any adjustment made to arrive at that measure could be misleading to investors. The following examples would violate Rule 100(b) of Regulation G:

- Failure to identify and describe a measure as non-GAAP.
- Presenting a non-GAAP measure with a label that does not reflect the nature of the non-GAAP measure, such as:
 - a contribution margin that is calculated as GAAP revenue less certain expenses, labeled “net revenue”;

- non-GAAP measure labeled the same as a GAAP line item or subtotal even though it is calculated differently than the similarly labeled GAAP measure, such as “Gross Profit” or “Sales”; and
- a non-GAAP measure labeled “pro forma” that is not calculated in a manner consistent with the pro forma requirements in Article 11 of Regulation S-X. [December 13, 2022]

Question 100.06

Question: Can a non-GAAP measure be misleading, and violate Rule 100(b) of Regulation G, even if it is accompanied by disclosure about the nature and effect of each adjustment made to the most directly comparable GAAP measure?

Answer: Yes. It is the staff’s view that a non-GAAP measure could mislead investors to such a degree that even extensive, detailed disclosure about the nature and effect of each adjustment would not prevent the non-GAAP measure from being materially misleading. [December 13, 2022]

Section 101. Business Combination Transactions

Question 101.01

Question: Are financial measures included in forecasts provided to a financial advisor and used in connection with a business combination transaction non-GAAP financial measures?

Answer: No, if the conditions described below are met.

Item 10(e)(5) of Regulation S-K and Rule 101(a)(3) of Regulation G provide that a non-GAAP financial measure does not include financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. Accordingly, financial measures provided to a financial advisor would be excluded from the definition of non-GAAP financial measures, and therefore not subject to Item 10(e) of Regulation S-K and Regulation G, if and to the extent:

- the financial measures are included in forecasts provided to the financial advisor for the purpose of rendering an opinion that is materially related to the business combination transaction; and
- the forecasts are being disclosed in order to comply with Item 1015 of Regulation M-A or requirements under state or foreign law, including case law, regarding disclosure of the financial advisor’s analyses or substantive work. [Oct. 17, 2017]

Question 101.02

Question: Can the registrant rely on the Answer to Question 101.01 if the same forecasts provided to its financial advisor are also provided to its board of directors or board committee?

Answer: Yes. [April 4, 2018]

Question 101.03

Question: A registrant provides forecasts to bidders in a business combination transaction. To avoid anti-fraud concerns under the federal securities laws or

ensure that the other disclosures in the document are not misleading, it determines that such forecasts should be disclosed. Are the financial measures contained in forecasts disclosed for this purpose considered non-GAAP financial measures?

Answer: If a registrant determines that forecasts exchanged between the parties in a business combination transaction are material and that disclosure of such forecasts is required to comply with the anti-fraud and other liability provisions of the federal securities laws, the financial measures included in such forecasts would be excluded from the definition of non-GAAP financial measures and therefore not subject to Item 10(e) of Regulation S-K and Regulation G. [April 4, 2018]

Question 101.04

Question: Does the exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures disclosed in communications relating to a business combination transaction extend to the same non-GAAP financial measures disclosed in registration statements, proxy statements and tender offer statements?

Answer: No. There is an exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures disclosed in communications subject to Securities Act Rule 425 and Exchange Act Rules 14a-12 and 14d-2(b)(2); it is also intended to apply to communications subject to Exchange Act Rule 14d-9(a)(2). This exemption does not extend beyond such communications. Consequently, if the same non-GAAP financial measure that was included in a communication filed under one of those rules is also disclosed in a Securities Act registration statement, proxy statement, or tender offer statement, this exemption from Regulation G and Item 10(e) of Regulation S-K would not be available for that non-GAAP financial measure. [Oct. 17, 2017]

Question 101.05

Question: If reconciliation of a non-GAAP financial measure is required and the most directly comparable measure is a "pro forma" measure prepared and presented in accordance with Article 11 of Regulation S-X, may companies use that measure for reconciliation purposes, in lieu of a GAAP financial measure?

Answer: Yes. [Jan. 11, 2010]

Section 102. Item 10(e) of Regulation S-K

Question 102.01

Question: What measure was contemplated by "funds from operations" in footnote 50 to Exchange Act Release No. 47226, Conditions for Use of Non-GAAP Financial Measures, which indicates that companies may use "funds from operations per share" in earnings releases and materials that are filed or furnished to the Commission, subject to the requirements of Regulation G and Item 10(e) of Regulation S-K?

Answer: The reference to "funds from operations" in footnote 50, or "FFO," refers to the measure defined as of January 1, 2000, by the National Association of Real Estate Investment Trusts (NAREIT). NAREIT has revised

and clarified the definition since 2000. The staff accepts NAREIT's definition of FFO in effect as of May 17, 2016 as a performance measure and does not object to its presentation on a per share basis. [May 17, 2016]

Question 102.02

Question: May a registrant present FFO on a basis other than as defined by NAREIT as of May 17, 2016?

Answer: Yes, provided that any adjustments made to FFO comply with Item 10(e) of Regulation S-K and the measure does not violate Rule 100(b) of Regulation G. Any adjustments made to FFO must comply with the requirements of Item 10(e) of Regulation S-K for a performance measure or a liquidity measure, depending on the nature of the adjustments, some of which may trigger the prohibition on presenting this measure on a per share basis. See Section 100 and Question 102.05. [May 17, 2016]

Question 102.03

Question: Item 10(e) of Regulation S-K prohibits adjusting a non-GAAP financial performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years. Is this prohibition based on the description of the charge or gain, or is it based on the nature of the charge or gain?

Answer: The prohibition is based on the description of the charge or gain that is being adjusted. It would not be appropriate to state that a charge or gain is non-recurring, infrequent or unusual unless it meets the specified criteria. The fact that a registrant cannot describe a charge or gain as non-recurring, infrequent or unusual, however, does not mean that the registrant cannot adjust for that charge or gain. Registrants can make adjustments they believe are appropriate, subject to Regulation G and the other requirements of Item 10(e) of Regulation S-K. See Question 100.01. [May 17, 2016]

Question 102.04

Question: Is the registrant required to use the non-GAAP measure in managing its business or for other purposes in order to be able to disclose it?

Answer: No. Item 10(e)(1)(i)(D) of Regulation S-K states only that, "[t]o the extent material," there should be a statement disclosing the additional purposes, "if any," for which the registrant's management uses the non-GAAP financial measure. There is no prohibition against disclosing a non-GAAP financial measure that is not used by management in managing its business. [Jan. 11, 2010]

Question 102.05

Question: While Item 10(e)(1)(ii) of Regulation S-K does not prohibit the use of per share non-GAAP financial measures, the adopting release for Item 10(e), Exchange Act Release No. 47226, states that "per share measures that are prohibited specifically under GAAP or Commission rules continue to be prohibited in materials filed with or furnished to the Commission." In light of Commission guidance, specifically Accounting Series Release No. 142, *Reporting Cash Flow and Other Related Data*, and Accounting Standards

Codification 230, are non-GAAP earnings per share numbers prohibited in documents filed or furnished with the Commission?

Answer: No. Item 10(e) recognizes that certain non-GAAP per share performance measures may be meaningful from an operating standpoint. Non-GAAP per share performance measures should be reconciled to GAAP earnings per share. On the other hand, non-GAAP liquidity measures that measure cash generated must not be presented on a per share basis in documents filed or furnished with the Commission, consistent with Accounting Series Release No. 142. Whether per share data is prohibited depends on whether the non-GAAP measure can be used as a liquidity measure, even if management presents it solely as a performance measure. When analyzing these questions, the staff will focus on the substance of the non-GAAP measure and not management's characterization of the measure. [May 17, 2016]

Question 102.06

Question: Is Item 10(e)(1)(i) of Regulation S-K, which requires the prominent presentation of, and reconciliation to, the most directly comparable GAAP financial measure or measures, intended to change the staff's practice of requiring the prominent presentation of amounts for the three major categories of the statement of cash flows when a non-GAAP liquidity measure is presented?

Answer: No. The requirements in Item 10(e)(1)(i) are consistent with the staff's practice. The three major categories of the statement of cash flows should be presented when a non-GAAP liquidity measure is presented. [Jan. 11, 2010]

Question 102.07

Question: Some companies present a measure of "free cash flow," which is typically calculated as cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures. Does Item 10(e)(1)(ii) of Regulation S-K prohibit this measure in documents filed with the Commission?

Answer: No. The deduction of capital expenditures from the GAAP financial measure of cash flows from operating activities would not violate the prohibitions in Item 10(e)(1)(ii). However, companies should be aware that this measure does not have a uniform definition and its title does not describe how it is calculated. Accordingly, a clear description of how this measure is calculated, as well as the necessary reconciliation, should accompany the measure where it is used. Companies should also avoid inappropriate or potentially misleading inferences about its usefulness. For example, "free cash flow" should not be used in a manner that inappropriately implies that the measure represents the residual cash flow available for discretionary expenditures, since many companies have mandatory debt service requirements or other non-discretionary expenditures that are not deducted from the measure. Also, free cash flow is a liquidity measure that must not be presented on a per share basis. See Question 102.05. [May 17, 2016]

Question 102.08

Question: Does Item 10(e) of Regulation S-K apply to filed free writing prospectuses?

Answer: Regulation S-K applies to registration statements filed under the Securities Act, as well as registration statements, periodic and current reports and other documents filed under the Exchange Act. A free writing prospectus is not filed as part of the issuer's registration statement, unless the issuer files it on Form 8-K or otherwise includes it or incorporates it by reference into the registration statement. Therefore, Item 10(e) of Regulation S-K does not apply to a filed free writing prospectus unless the free writing prospectus is included in or incorporated by reference into the issuer's registration statement or included in an Exchange Act filing. [Jan. 11, 2010]

Question 102.09

Question: Item 10(e)(1)(ii)(A) of Regulation S-K prohibits "excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation and amortization (EBITDA)." A company's credit agreement contains a material covenant regarding the non-GAAP financial measure "Adjusted EBITDA." If disclosed in a filing, the non-GAAP financial measure "Adjusted EBITDA" would violate Item 10(e), as it excludes charges that are required to be cash settled. May a company nonetheless disclose this non-GAAP financial measure?

Answer: Yes. The prohibition in Item 10(e) notwithstanding, because MD&A requires disclosure of material items affecting liquidity, if management believes that the credit agreement is a material agreement, that the covenant is a material term of the credit agreement and that information about the covenant is material to an investor's understanding of the company's financial condition and/or liquidity, then the company may be required to disclose the measure as calculated by the debt covenant as part of its MD&A. In disclosing the non-GAAP financial measure in this situation, a company should consider also disclosing the following:

- the material terms of the credit agreement including the covenant;
 - the amount or limit required for compliance with the covenant; and
 - the actual or reasonably likely effects of compliance or non-compliance with the covenant on the company's financial condition and liquidity.
- [Jan. 11, 2010]

Question 102.10

Question 102.10(a): Item 10(e)(1)(i)(A) of Regulation S-K requires that when a registrant presents a non-GAAP measure it must present the most directly comparable GAAP measure with equal or greater prominence. This requirement applies to non-GAAP measures presented in documents filed with the Commission and also earnings releases furnished under Item 2.02 of Form 8-K. Are there examples of disclosures that would cause a non-GAAP measure to be more prominent?

Answer: Yes. This requirement applies to the presentation of, and any related discussion and analysis of, a non-GAAP measure. Whether a non-GAAP

measure is more prominent than the comparable GAAP measure generally depends on the facts and circumstances in which the disclosure is made. The staff would consider the following to be examples of non-GAAP measures that are more prominent than the comparable GAAP measures:

- Presenting an income statement of non-GAAP measures. See Question 102.10(c).
- Presenting a non-GAAP measure before the most directly comparable GAAP measure or omitting the comparable GAAP measure altogether, including in an earnings release headline or caption that includes a non-GAAP measure.
- Presenting a ratio where a non-GAAP financial measure is the numerator and/or denominator without also presenting the ratio calculated using the most directly comparable GAAP measure(s) with equal or greater prominence.
- Presenting a non-GAAP measure using a style of presentation (e.g. bold, larger font, etc.) that emphasizes the non-GAAP measure over the comparable GAAP measure.
- Describing a non-GAAP measure as, for example, “record performance” or “exceptional” without at least an equally prominent descriptive characterization of the comparable GAAP measure.
- Presenting charts, tables or graphs of a non-GAAP financial measures without presenting charts, tables or graphs of the comparable GAAP measures with equal or greater prominence, or omitting the comparable GAAP measures altogether.
- Providing discussion and analysis of a non-GAAP measure without a similar discussion and analysis of the comparable GAAP measure in a location with equal or greater prominence. [December 13, 2022]

Question 102.10(b): Are there examples of disclosures that would cause the non-GAAP reconciliation required by Item 10(e)(1)(i)(B) of Regulation S-K to give undue prominence to a non-GAAP measure?

Answer: Yes. The staff would consider the following examples of disclosure of non-GAAP measures as more prominent than the comparable GAAP measures:

- Starting the reconciliation with a non-GAAP measure.
- Presenting a non-GAAP income statement when reconciling non-GAAP measures to the most directly comparable GAAP measures. See Question 102.10(c).
- When presenting a forward-looking non-GAAP measure, a registrant may exclude the quantitative reconciliation if it is relying on the exception provided by Item 10(e)(1)(i)(B) of Regulation S-K. A measure would be considered more prominent than the comparable GAAP measure if it is presented without disclosing reliance upon the exception, identifying the information that is unavailable, and its probable significance in a location of equal or greater prominence. [December 13, 2022]

Question 102.10(c): The staff considers the presentation of a non-GAAP income statement, alone or as part of the required non-GAAP reconciliation, as giving undue prominence to non-GAAP measures. What is considered to be a non-GAAP income statement?

Answer: The staff considers a non-GAAP income statement to be one that is comprised of non-GAAP measures and includes all or most of the line items and subtotals found in a GAAP income statement. [December 13, 2022]

Question 102.11

Question: How should income tax effects related to adjustments to arrive at a non-GAAP measure be calculated and presented?

Answer: A registrant should provide income tax effects on its non-GAAP measures depending on the nature of the measures. If a measure is a liquidity measure that includes income taxes, it might be acceptable to adjust GAAP taxes to show taxes paid in cash. If a measure is a performance measure, the registrant should include current and deferred income tax expense commensurate with the non-GAAP measure of profitability. In addition, adjustments to arrive at a non-GAAP measure should not be presented "net of tax." Rather, income taxes should be shown as a separate adjustment and clearly explained. [May 17, 2016]

Question 102.12

Question: A registrant discloses a financial measure or information that is not in accordance with GAAP or calculated exclusively from amounts presented in accordance with GAAP. In some circumstances, this financial information may have been prepared in accordance with guidance published by a government, governmental authority or self-regulatory organization that is applicable to the registrant, although the information is not required disclosure by the government, governmental authority or self-regulatory organization. Is this information considered to be a "non-GAAP financial measure" for purposes of Regulation G and Item 10 of Regulation S-K?

Answer: Yes. Unless this information is *required* to be disclosed by a system of regulation that is applicable to the registrant, it is considered to be a "non-GAAP financial measure" under Regulation G and Item 10 of Regulation S-K. Registrants that disclose such information must provide the disclosures required by Regulation G or Item 10 of Regulation S-K, if applicable, including the quantitative reconciliation from the non-GAAP financial measure to the most comparable measure calculated in accordance with GAAP. This reconciliation should be in sufficient detail to allow a reader to understand the nature of the reconciling items. [Apr. 24, 2009]

Section 103. EBIT and EBITDA

Question 103.01

Question: Exchange Act Release No. 47226 describes EBIT as "earnings before interest and taxes" and EBITDA as "earnings before interest, taxes, depreciation and amortization." What GAAP measure is intended by the term "earnings"? May measures other than those described in the release be characterized as "EBIT" or "EBITDA"? Does the exception for EBIT and EBITDA from the prohibition in Item 10(e)(1)(ii)(A) of Regulation S-K apply to these other measures?

Answer: "Earnings" means net income as presented in the statement of operations under GAAP. Measures that are calculated differently than those described as EBIT and EBITDA in Exchange Act Release No. 47226 should not

be characterized as "EBIT" or "EBITDA" and their titles should be distinguished from "EBIT" or "EBITDA," such as "Adjusted EBITDA." These measures are not exempt from the prohibition in Item 10(e)(1)(ii)(A) of Regulation S-K, with the exception of measures addressed in Question 102.09. [Jan. 11, 2010]

Question 103.02

Question: If EBIT or EBITDA is presented as a performance measure, to which GAAP financial measure should it be reconciled?

Answer: If a company presents EBIT or EBITDA as a performance measure, such measures should be reconciled to net income as presented in the statement of operations under GAAP. Operating income would not be considered the most directly comparable GAAP financial measure because EBIT and EBITDA make adjustments for items that are not included in operating income. In addition, these measures must not be presented on a per share basis. See Question 102.05. [May 17, 2016]

Section 104. Segment Information

Question 104.01

Question: Is segment information that is presented in conformity with Accounting Standards Codification 280, pursuant to which a company may determine segment profitability on a basis that differs from the amounts in the consolidated financial statements determined in accordance with GAAP, considered to be a non-GAAP financial measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: No. Non-GAAP financial measures do not include financial measures that are required to be disclosed by GAAP. Exchange Act Release No. 47226 lists "measures of profit or loss and total assets for each segment required to be disclosed in accordance with GAAP" as examples of such measures. The measure of segment profit or loss and segment total assets under Accounting Standards Codification 280 is the measure reported to the chief operating decision maker for purposes of making decisions about allocating resources to the segment and assessing its performance.

The list of examples in Exchange Act Release No. 47226 is not exclusive. As an additional example, because Accounting Standards Codification 280 requires or expressly permits the footnotes to the company's consolidated financial statements to include specific additional financial information for each segment, that information also would be excluded from the definition of non-GAAP financial measures. [Jan. 11, 2010]

Question 104.02

Question: Does Item 10(e)(1)(ii) of Regulation S-K prohibit the discussion in MD&A of segment information determined in conformity with Accounting Standards Codification 280?

Answer: No. Where a company includes in its MD&A a discussion of segment profitability determined consistent with Accounting Standards Codification 280, which also requires that a footnote to the company's consolidated financial statements provide a reconciliation, the company also should include in the segment discussion in the MD&A a complete discussion of the reconciling

items that apply to the particular segment being discussed. In this regard, see Financial Reporting Codification Section 501.06.a, footnote 28. [Jan. 11, 2010]

Question 104.03

Question: Is a measure of segment profit/loss or liquidity that is not in conformity with Accounting Standards Codification 280 a non-GAAP financial measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: Yes. Segment measures that are adjusted to include amounts excluded from, or to exclude amounts included in, the measure reported to the chief operating decision maker for purposes of making decisions about allocating resources to the segment and assessing its performance do not comply with Accounting Standards Codification 280. Such measures are, therefore, non-GAAP financial measures and subject to all of the provisions of Regulation G and Item 10(e) of Regulation S-K. [Jan. 11, 2010]

Question 104.04

Question: In the footnote that reconciles the segment measures to the consolidated financial statements, a company may total the profit or loss for the individual segments as part of the Accounting Standards Codification 280 required reconciliation. Would the presentation of the total segment profit or loss measure in any context other than the Accounting Standards Codification 280 required reconciliation in the footnote be the presentation of a non-GAAP financial measure?

Answer: Yes. The presentation of the total segment profit or loss measure in any context other than the Accounting Standards Codification 280 required reconciliation in the footnote would be the presentation of a non-GAAP financial measure because it has no authoritative meaning outside of the Accounting Standards Codification 280 required reconciliation in the footnotes to the company's consolidated financial statements. [Jan. 11, 2010]

Question 104.05

Question: Company X presents a table illustrating a breakdown of revenues by certain products, but does not sum this to the revenue amount presented on Company X's financial statements. Is the information in the table considered a non-GAAP financial measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: No, assuming the product revenue amounts are calculated in accordance with GAAP. The presentation would be considered a non-GAAP financial measure, however, if the revenue amounts are adjusted in any manner. [Jan. 11, 2010]

Question 104.06

Question: Company X has operations in various foreign countries where the local currency is used to prepare the financial statements which are translated into the reporting currency under the applicable accounting standards. In preparing its MD&A, Company X will explain the reasons for changes in various financial statement captions. A portion of these changes will be attributable to changes in exchange rates between periods used for translation. Company X wants to isolate the effect of exchange rate differences and will present financial information in a constant currency – e.g. assume a constant exchange

rate between periods for translation. Would such a presentation be considered a non-GAAP measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: Yes. Company X may comply with the reconciliation requirements of Regulation G and Item 10(e) by presenting the historical amounts and the amounts in constant currency and describing the process for calculating the constant currency amounts and the basis of presentation. [Jan. 11, 2010]

Section 105. Item 2.02 of Form 8-K

Question 105.01

Question: Item 2.02 of Form 8-K contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its web site any financial and other statistical information contained in the presentation, together with any information that would be required by Regulation G. Would an audio file of the initial webcast satisfy this condition to the exemption?

Answer: Yes, provided that: (1) the audio file contains all material financial and other statistical information included in the presentation that was not previously disclosed, and (2) investors can access it and replay it through the company's web site. Alternatively, slides or a similar presentation posted on the web site at the time of the presentation containing the required, previously undisclosed, material financial and other statistical information would satisfy the condition. In each case, the company must provide all previously undisclosed material financial and other statistical information, including information provided in connection with any questions and answers. Regulation FD also may impose disclosure requirements in these circumstances. [Jan. 11, 2010]

Question 105.02

Question: Item 2.02 of Form 8-K contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its web site any material financial and other statistical information not previously disclosed and contained in the presentation, together with any information that would be required by Regulation G. When must all of this information appear on the company's web site?

Answer: The required information must appear on the company's web site at the time the oral presentation is made. In the case of information that is not provided in a presentation itself but, rather, is disclosed unexpectedly in connection with the question and answer session that was part of that oral presentation, the information must be posted on the company's web site promptly after it is disclosed. Any requirements of Regulation FD also must be satisfied. A webcast of the oral presentation would be sufficient to meet this requirement. [Jan. 11, 2010]

Question 105.03

Question: Does a company's failure to furnish to the Commission the Form 8-K required by Item 2.02 in a timely manner affect the company's eligibility to use Form S-3?

Answer: No. Form S-3 requires the company to have filed in "a timely manner all reports required to be filed in twelve calendar months and any portion of a month immediately preceding the filing of the registration statement." Because an Item 2.02 Form 8-K is furnished to the Commission, rather than filed with the Commission, failure to furnish such a Form 8-K in a timely manner would not affect a company's eligibility to use Form S-3. While not affecting a company's Form S-3 eligibility, failure to comply with Item 2.02 of Form 8-K would, of course, be a violation of Section 13(a) of the Exchange Act and the rules thereunder. [Jan. 11, 2010]

Question 105.04 [withdrawn]**Question 105.05**

Question: Company X files its quarterly earnings release as an exhibit to its Form 10-Q on Wednesday morning, prior to holding its earnings conference call Wednesday afternoon. Assuming that all of the other conditions of Item 2.02(b) are met, may the company rely on the exemption for its conference call even if it does not also furnish the earnings release in an Item 2.02 Form 8-K?

Answer: Yes. Company X's filing of the earnings release as an exhibit to its Form 10-Q, rather than in an Item 2.02 Form 8-K, before the conference call takes place, would not preclude reliance on the exemption for the conference call. [Jan. 11, 2010]

Question 105.06

Question: Company A issues a press release announcing its results of operations for a just-completed fiscal quarter, including its expected adjusted earnings (a non-GAAP financial measure) for the fiscal period. Would this press release be subject to Item 2.02 of Form 8-K?

Answer: Yes, because it contains material, non-public information regarding its results of operations for a completed fiscal period. The adjusted earnings range presented would be subject to the requirements of Item 2.02 applicable to non-GAAP financial measures. [Jan. 11, 2010]

Question 105.07

Question: A company issues its earnings release after the close of the market and holds a properly noticed conference call to discuss its earnings two hours later. That conference call contains material, previously undisclosed, information of the type described under Item 2.02 of Form 8-K. Because of this timing, the company is unable to furnish its earnings release on a Form 8-K before its conference call. Accordingly, the company cannot rely on the exemption from the requirement to furnish the information in the conference call on a Form 8-K. What must the company file with regard to its conference call?

Answer: The company must furnish the material, previously non-public, financial and other statistical information required to be furnished on Item 2.02 of Form 8-K as an exhibit to a Form 8-K and satisfy the other requirements of

Item 2.02 of Form 8-K. A transcript of the portion of the conference call or slides or a similar presentation including such information will satisfy this requirement. In each case, all material, previously undisclosed, financial and other statistical information, including that provided in connection with any questions and answers, must be provided. [Jan. 15, 2010]

Section 106. Foreign Private Issuers

Question 106.01

Question: The Note to Item 10(e) of Regulation S-K permits a foreign private issuer to include in its filings a non-GAAP financial measure that otherwise would be prohibited by Item 10(e)(1)(ii) if, among other things, the non-GAAP financial measure is required or expressly permitted by the standard setter that is responsible for establishing the GAAP used in the company's primary financial statements included in its filing with the Commission. What does "expressly permitted" mean?

Answer: A measure is "expressly permitted" if the particular measure is clearly and specifically identified as an acceptable measure by the standard setter that is responsible for establishing the GAAP used in the company's primary financial statements included in its filing with the Commission.

The concept of "expressly permitted" can be also be demonstrated with explicit acceptance of a presentation by the primary securities regulator in the foreign private issuer's home country jurisdiction or market. Explicit acceptance by the regulator would include (1) published views of the regulator or members of the regulator's staff or (2) a letter from the regulator or its staff to the foreign private issuer indicating the acceptance of the presentation — which would be provided to the Commission's staff upon request. [Jan. 11, 2010]

Question 106.02

Question: A foreign private issuer furnishes a press release on Form 6-K that includes a section with non-GAAP financial measures. Can a foreign private issuer incorporate by reference into a Securities Act registration statement only those portions of the furnished press release that do not include the non-GAAP financial measures?

Answer: Yes. Reports on Form 6-K are not incorporated by reference automatically into Securities Act registration statements. In order to incorporate a Form 6-K into a Securities Act registration statement, a foreign private issuer must specifically provide for such incorporation by reference in the registration statement and in any subsequently submitted Form 6-K. See Item 6(c) of Form F-3. Where a foreign private issuer wishes to incorporate by reference a portion or portions of the press release provided on a Form 6-K, the foreign private issuer should either: (1) specify in the Form 6-K those portions of the press release to be incorporated by reference, or (2) furnish two Form 6-K reports, one that contains the full press release and another that contains the portions that would be incorporated by reference (and specifies that the second Form 6-K is so incorporated). Using a separate report on Form 6-K containing the portions that would be incorporated by reference may provide more clarity for investors in most circumstances. A company must also

consider whether its disclosure is rendered misleading if it incorporates only a portion (or portions) of a press release. [Jan. 11, 2010]

Question 106.03

Question: A foreign private issuer publishes a non-GAAP financial measure that does not comply with Regulation G, in reliance on Rule 100(c), and then furnishes the information in a report on Form 6-K. Must the foreign private issuer comply with Item 10(e) of Regulation S-K with respect to that information if the company chooses to incorporate that Form 6-K report into a filed Securities Act registration statement (other than an MJDS registration statement)?

Answer: Yes, the company must comply with all of the provisions of Item 10(e) of Regulation S-K. [Jan. 11, 2010]

Question 106.04

Question: If a Canadian company includes a non-GAAP financial measure in an annual report on Form 40-F, does the company need to comply with Regulation G or Item 10(e) of Regulation S-K with respect to that information if the company files a non-MJDS Securities Act registration statement that incorporates by reference the Form 40-F?

Answer: No. Information included in a Form 40-F is not subject to Regulation G or Item 10(e) of Regulation S-K. [Jan. 11, 2010]

Section 107. Voluntary Filers

Question 107.01

Question: Section 15(d) of the Exchange Act suspends automatically its application to any company that would be subject to the filing requirements of that section where, if other conditions are met, on the first day of the company's fiscal year it has fewer than 300 holders of record of the class of securities that created the Section 15(d) obligation. This suspension, which relates to the fiscal year in which the fewer than 300 record holders determination is made on the first day thereof, is automatic and does not require any filing with the Commission. The Commission adopted Rule 15d-6 under the Exchange Act to require the filing of a Form 15 as a notice of the suspension of a company's reporting obligation under Section 15(d). Such a filing, however, is not a condition to the suspension. A number of companies whose Section 15(d) reporting obligation is suspended automatically by the statute choose not to file the notice required by Rule 15d-6 and continue to file Exchange Act reports as though they continue to be required. Must a company whose reporting obligation is suspended automatically by Section 15(d) but continues to file periodic reports as though it were required to file periodic reports comply with Regulation G and the requirements of Item 10(e) of Regulation S-K?

Answer: Yes. Regulation S-K relates to filings with the Commission. Accordingly, a company that is making filings as described in this question must comply with Regulation S-K or Form 20-F, as applicable, in its filings.

As to other public communications, any company "that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or is

required to file reports under Section 15(d) of the Securities Exchange Act of 1934" must comply with Regulation G. The application of this standard to those companies that no longer are "required" to report under Section 15(d) but choose to continue to report presents a difficult dilemma, as those companies technically are not subject to Regulation G but their continued filing is intended to and does give the appearance that they are a public company whose disclosure is subject to the Commission's regulations. It is reasonable that this appearance would cause shareholders and other market participants to expect and rely on a company's required compliance with the requirements of the federal securities laws applicable to companies reporting under Section 15(d). Accordingly, while Regulation G technically does not apply to a company such as the one described in this question, the failure of such a company to comply with all requirements (including Regulation G) applicable to a Section 15(d)-reporting company can raise significant issues regarding that company's compliance with the anti-fraud provisions of the federal securities laws. [Jan. 11, 2010]

Section 108. Compensation Discussion and Analysis/Proxy Statement

Question 108.01

Question: Instruction 5 to Item 402(b) provides that "[d]isclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G and Item 10(e); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements." Does this instruction extend to non-GAAP financial information that does not relate to the disclosure of target levels, but is nevertheless included in Compensation Discussion & Analysis ("CD&A") or other parts of the proxy statement – for example, to explain the relationship between pay and performance?

Answer: No. Instruction 5 to Item 402(b) is limited to CD&A disclosure of target levels that are non-GAAP financial measures. If non-GAAP financial measures are presented in CD&A or in any other part of the proxy statement for any other purpose, such as to explain the relationship between pay and performance or to justify certain levels or amounts of pay, then those non-GAAP financial measures are subject to the requirements of Regulation G and Item 10(e) of Regulation S-K.

In these pay-related circumstances only, the staff will not object if a registrant includes the required GAAP reconciliation and other information in an annex to the proxy statement, provided the registrant includes a prominent cross-reference to such annex. Or, if the non-GAAP financial measures are the same as those included in the Form 10-K that is incorporating by reference the proxy statement's Item 402 disclosure as part of its Part III information, the staff will not object if the registrant complies with Regulation G and Item 10(e) by providing a prominent cross-reference to the pages in the Form 10-K containing the required GAAP reconciliation and other information. [July 8, 2011]

KPMG Financial Reporting View

Delivering guidance and insights, KPMG Financial Reporting View is ready to inform your decision making. Stay up to date with us.



Defining Issues

Our collection of newsletters with insights and news about financial reporting and regulatory developments, including Quarterly Outlook and FRV Weekly.



Handbooks and Hot Topics

Our discussion and analysis of accounting topics – from short Hot Topics that deal with a topical issue, to our in-depth guides covering a broad area of accounting.



CPE opportunities

Register for live discussions of topical accounting and financial reporting issues. CPE-eligible replays also available.



Financial Reporting Podcasts

Tune in to hear KPMG professionals discuss major accounting and financial reporting developments.



Visit [Financial Reporting View](#) and [sign up](#) for news and insights

Access our US Handbooks

As part of [Financial Reporting View](#), our library of in-depth guidance can be accessed [here](#), including the following Handbooks.

- Accounting changes and error corrections
- Accounting for economic disruption
- Asset acquisitions
- Bankruptcies
- Business combinations
- Business combinations (SEC reporting)
- Climate risk in the financial statements
- Consolidation
- Contingencies, commitments and guarantees
- Credit impairment
- Debt and equity financing
- Derivatives and hedging
- Discontinued operations and held-for-sale disposal groups
- Earnings per share
- Employee benefits
- Equity method of accounting
- Fair value measurement
- Financial statement presentation
- Foreign currency
- GHG emissions reporting
- Going concern
- IFRS® compared to US GAAP
- Impairment of nonfinancial assets
- Income taxes
- Internal control over financial reporting
- Inventory
- Investment companies
- Investments
- Leases
- Long-duration contracts
- Reference rate reform
- Research and development
- Revenue recognition
- Revenue: Real estate
- Revenue: Software and SaaS
- Segment reporting
- Service concession arrangements
- Share-based payment
- Software and website costs
- Statement of cash flows
- Tax credits
- Transfers and servicing of financial assets

Learn about us:



[kpmg.com](https://www.kpmg.com)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2026 KPMG LLP, a Delaware limited liability partnership, and its subsidiaries are part of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

Nareit®, the National Association of Real Estate Investment Trusts®, has given permission to KPMG for the use of its content, copywritten material, and trademarks in this publication. No Nareit material, sites, or brand marks may be reproduced without express permission of Nareit. All rights reserved.

The FASB Accounting Standards Codification® and other FASB content are copyrighted by the Financial Accounting Foundation, Norwalk, Connecticut, and are used with permission.

The AICPA content is copyrighted by the American Institute of Certified Public Accountants, Inc. and is used with permission.

This publication contains copyright © material and trademarks of the IFRS® Foundation. All rights reserved. Reproduced by KPMG LLP with the permission of the IFRS Foundation. Reproduction and use rights are strictly limited. For more information about the IFRS Foundation and rights to use its material please visit www.ifrs.org.

Disclaimer: To the extent permitted by applicable law the IASB, the ISSB and the IFRS Foundation expressly disclaims all liability howsoever arising from this publication or any translation thereof whether in contract, tort or otherwise (including, but not limited to, liability for any negligent act or omission) to any person in respect of any claims or losses of any nature including direct, indirect, incidental or consequential loss, punitive damages, penalties or costs.

Information contained in this publication does not constitute advice and should not be substituted for the services of an appropriately qualified professional.

'ISSB™' is a Trade Mark and 'IFRS®', 'IASB®', 'IFRIC®', 'IFRS for SMEs®', 'IAS®' and 'SIC®' are registered Trade Marks of the IFRS Foundation and are used by KPMG LLP under licence subject to the terms and conditions contained therein. Please contact the IFRS Foundation for details of countries where its Trade Marks are in use and/or have been registered.