

PUBLIC COMPANIES

# Regulation G (Non-GAAP Disclosures) Guide – 2024

SEPTEMBER 2024

EDITORS

JEFFREY R. SHUMAN

# Table of Contents

Table of Contents .....	2
II. Background and Executive Summary .....	3
III. Best Practices for Non-GAAP Financial Measures .....	4
IV. Overview of Non-GAAP Financial Measures .....	6
Appendix A: Regulation S-K, Item 10(e) and Regulation G .....	13
Appendix B: Compliance & Disclosure Interpretations .....	19
Appendix C: Division of Corporation Finance – Financial Reporting Manual – Topic 8 .....	38

## I. PUBLIC COMPANY GATEWAY

For more practical, business driven resources and thought leadership for boards and leaders of public companies, visit Winston & Strawn's [Public Company Gateway](#), a one-stop portal for the latest legal and regulatory developments as well as key checklists, guides and other pragmatic desktop tools. To subscribe to the Gateway and ensure that you receive timely updates, please click [here](#).

## II. Background and Executive Summary

Non-GAAP financial measures can be a meaningful way to supplement a registrant's GAAP financial disclosures and provide investors and analysts with a more complete picture of the registrant's business, performance and liquidity. However, such measures, when inconsistently used and/or poorly defined or explained, can be misleading to investors. Following a number of corporate accounting scandals, including at Enron and WorldCom, and pursuant to the mandate included within the Sarbanes-Oxley Act of 2002, the SEC enacted rules with respect to non-GAAP financial measures – in particular Regulation G – to provide structure to the use of non-GAAP financial measures and help to restore confidence in the public markets.

# III. Best Practices for Non-GAAP Financial Measures

## A. PRESENT GAAP MEASURES WITH EQUAL OR GREATER PROMINENCE

Where non-GAAP measures are presented in an earnings release or another SEC filing that is subject to Regulation G, SEC rules require that the corresponding GAAP measure be presented with equal or greater prominence. There is no requirement to present the reconciliation with equal or greater prominence in public disclosures that are not filed with the SEC. The below best practices discuss some of the considerations registrants should keep in mind in presenting these measures.

### I. GAAP MEASURES SHOULD ALWAYS PRECEDE NON-GAAP MEASURES

Where non-GAAP measures are presented in an earnings release or another SEC filing that is subject to Regulation G, the non-GAAP measure should always be preceded by the corresponding GAAP measure. Providing the GAAP metric and the relevant reconciliation later in the filing is not sufficient.

### II. PAY SPECIAL ATTENTION TO BULLET POINTS AND QUOTES

Where an earnings release emphasizes non-GAAP financial measures – either by including them in bullet points at the beginning of the release or in a quote by a member of the management team – it is important that the release present the corresponding GAAP measure with equal or greater prominence.

### III. BE CAREFUL WITH SUPERLATIVES

The SEC Staff considers describing a non-GAAP metric with superlatives – such as “exceptional” or “record performance” – without providing analogous descriptors when presenting the corresponding GAAP measure to be a violation of the “equal or greater prominence” requirement.

### IV. FORMATTING MATTERS

GAAP and non-GAAP measures must be presented with the same formatting. A registrant is not allowed to include non-GAAP metrics in bold or a larger font when GAAP metrics are not similarly formatted.

## **B. UNDERSTAND THE DIFFERENCE BETWEEN FINANCIAL METRICS AND OPERATIONAL METRICS**

Operating and other statistical measures (e.g., unit sales, numbers of employees or customers) or ratios and statistical measures that are calculated using only (i) financial measures based on GAAP and/or (ii) operating or other measures that are not non-GAAP financial measures (e.g., sales per square foot, if sales are determined based on GAAP) are excluded from the SEC’s definition of a non-GAAP financial measure. Nevertheless, it is best practice for registrants to provide definitions and other explanatory information for such metrics or other key performance indicators (KPIs).

## **C. ENSURE THAT THE RECONCILIATION IS TO THE MOST DIRECTLY COMPARABLE GAAP MEASURE**

Regulation G requires that the contemplated reconciliation be made to the most directly comparable GAAP measure. This is the case even where the comparable GAAP measure is not presented on the face of the financial statements. For example, if the non-GAAP measure “adjusted gross profit” is presented, the registrant must reconcile that measure to a GAAP gross profit measure.

## **D. REMEMBER THERE IS NO “DE MINIMIS” EXCEPTION TO RECONCILIATIONS**

A reconciliation is required with respect to a non-GAAP financial measure regardless of the size of the difference between the non-GAAP financial measure and the corresponding GAAP financial measure.

# IV. Overview of Non-GAAP Financial Measures

## A. NON-GAAP FINANCIAL MEASURES DEFINED

A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that includes or excludes amounts (or is subject to adjustments that include or exclude amounts) that are included in or excluded from (respectively) the most directly comparable GAAP measure.

Non-GAAP financial measures exclude operating and other statistical measures and ratios or statistical measures calculated using exclusively one or both of: (i) GAAP financial measures; and (ii) operating measures or other measures that are not non-GAAP financial measures. Non-GAAP financial measures exclude financial measures required to be disclosed by GAAP, SEC rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant.

The rules with respect to non-GAAP financial measures are contained within two separate regulations, which apply to the following communications:

- *Reg S-K, Item 10(e)* – applies to filings with the SEC (e.g., Forms 10-K and 10-Q, and earnings releases filed on Form 8-K); and
- *Reg G* – applies to any public disclosure not included in an SEC filing (e.g., other press releases, analyst presentations, earnings decks, etc., in each case not filed with the SEC).

## B. COMMON NON-GAAP FINANCIAL MEASURES

While registrants report a broad range of non-GAAP financial measures, some of the most commonly used and accepted non-GAAP financial measures include:

### I.

**EBIT** - earnings before interest and taxes

**EBITDA** - earnings before interest, taxes, depreciation, and amortization

**Adjusted earnings (or adjusted net income)** – earnings adjusted to remove various items (e.g., stock-based compensation, restructuring charges, and other unusual charges)

**Adjusted earnings per share** – adjusted earnings, calculated on a per share basis (note that per -share measures of liquidity, such as cash flow per share, are specifically prohibited by Regulation G)

**Free cash flow** – cash flows from operations less capital expenditures (there are multiple ways to calculate free cash flow, but in each case they ultimately reflect the amount by which a company’s operating cash flow exceeds its working capital needs and capital expenditures)

**Funds from operations (FFO)** – net income adjusted to add back depreciation and amortization and subtract gains on sales of assets (a non-GAAP metric specific to real estate investment trusts)

Registrants use a wide variety of other non-GAAP measures, but, prior to including other non-GAAP measures, a registrant should ensure any such measure is permissible, and properly defined and reconciled in the relevant filing or disclosure document. And, with respect to any non-GAAP measure, even these that are relatively “common”, registrants should bear in mind that the non-GAAP measure may not be permissible if it includes adjustments that are not permitted by Reg G or otherwise do not comply with the rules. In addition, registrants must describe how the non-GAAP measure is calculated and defined, as different registrants can calculate even non-GAAP measures having the same name in different ways.

## C. USE OF NON-GAAP FINANCIAL MEASURES IN SEC FILINGS

Whenever a non-GAAP financial measure is included in an SEC filing, including in a Form 10-K, a Form 10-Q or an earnings release filed on Form 8-K, the registrant must include:

- A presentation, *with equal or greater prominence*, of the most directly comparable financial measure or measures calculated and presented in accordance with GAAP;
- A reconciliation, which must 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 with the most directly comparable GAAP financial measure;
- A statement disclosing the reasons why management believes that presentation of the non-GAAP financial measure provides useful information to investors (not required in a Form 10-Q if previously provided in the most recent 10-K); and
- To the extent material, a statement disclosing the additional purposes, if any, for which management uses the non-GAAP financial measure (not required in a Form 10-Q if previously provided in the most recent 10-K).

## **D. USE OF NON-GAAP FINANCIAL MEASURES IN OTHER DISCLOSURES**

Where a non-GAAP financial measure is included in a public disclosure that is not filed with the SEC, the registrant must include:

- A presentation of the most directly comparable financial measure or measures calculated and presented in accordance with GAAP; and
- A reconciliation, which must 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 with the most directly comparable GAAP financial measure.

There is no requirement to present the reconciliation with equal or greater prominence in public disclosures that are not filed with the SEC.

## **E. NON-GAAP MEASURES THAT ARE INCONSISTENT WITH GAAP**

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 be misleading. For example, where GAAP requires that an earnings per share metric reflect the dilutive effect of shares to be issued, an adjustment that has the effect of excluding the dilutive effect of these shares would generally be considered to be individually tailored and not permissible. Such adjustments could draw comment from the SEC if included in a filing subject to Regulation G.

## **F. APPLICATION TO FOREIGN PRIVATE ISSUERS (FPIS)**

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.

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.

## **G. PROHIBITED NON-GAAP FINANCIAL MEASURES**

Where a non-GAAP financial measure is included in an SEC filing, the registrant must not:



- 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 EBIT and EBITDA;
- 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;
- Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;
- 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; or
- 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.

## H. NON-APPLICABILITY TO BUSINESS COMBINATIONS

The requirements of Item 10(e) of Regulation S-K do 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 the proxy rules or the rules relating to business combinations.

## I. “NON-WRITTEN” DISCLOSURES OF NON-GAAP FINANCIAL MEASURES

If a non-GAAP financial measure is made public orally, telephonically, by webcast, by broadcast, or by similar means, the requirements of Regulation G to present the most directly comparable GAAP financial measure and a reconciliation thereto may be satisfied if:

- the required information is provided on the registrant's website at the time the non-GAAP financial measure is made public; and
- the location and availability of the required information is disclosed during the presentation.

## J. PROXY STATEMENT DISCLOSURE OF TARGET LEVELS THAT ARE NON-GAAP FINANCIAL MEASURES

Pursuant to Instruction 5 to Item 402(b) of Regulation S-K, disclosure in the compensation discussion and analysis (CD&A) section of a proxy statement of target levels that are non-GAAP financial measures are not subject to Regulation G or Item 10(e) of Regulation S-K; however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements. The SEC staff has made it clear that the relief provided in Instruction 5 is limited to the CD&A but it provided some relief for other “pay-related” disclosures in its CD&As discussed below.

## K. FORWARD-LOOKING NON-GAAP FINANCIAL MEASURES AND PROJECTIONS

Both Item 10(e) of Regulation S-K and Regulation G require a reconciliation for forward-looking non-GAAP information, but it need not be quantitative unless the reconciling information is available without unreasonable efforts. If it is not available, the issuer must, in addition to providing any reconciling information that is available without unreasonable effort:

- disclose that the comparable GAAP measure is not accessible,
- identify the reconciling information that is unavailable, and
- disclose the probable significance of the unavailable information.

Effective July 2024, the SEC amended Item 10(b) of Regulation S-K, relating to the SEC’s policies regarding - tprojections. Item 10(b), as amended, provides that the presentation of projections in an SEC filing that include non-GAAP financial measures should include:

- a clear definition or explanation of those financial measures,
- a description of the most directly comparable GAAP measure, and
- an explanation of why the non-GAAP measure was selected instead of a GAAP measure.

Regulation G and Item 10(e) of Regulation S-K would generally also apply to the projections subject to Item 10(b) of Regulation S-K although this requirement does not apply to non-GAAP measures disclosed to a financial advisor as part of a proposed business combination. Issuers should pay close to attention to such these requirements when disclosing forward-looking information.

## L. NON-APPLICABILITY TO CERTAIN REGISTRANTS

The requirements of Item 10(e) of Regulation S-K do not apply to registered investment companies.

Under certain circumstances, the requirements of Item 10(e) of Regulation S-K and Regulation G do not apply to an FPI. A non-GAAP financial measure that would otherwise be prohibited as described in E. above (under Item 10(e) of Regulation S-K) is permitted in a filing by an FPI if:

- the non-GAAP financial measure relates to the accounting principles used in the FPI's primary financial statements included in its filings with the SEC (e.g., IFRS);
- the non-GAAP financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the accounting principles used in such financial statements; and
- the non-GAAP financial measure 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.

Furthermore, the provisions of Regulation G do not apply to disclosure of a non-GAAP financial measure that is made by an FPI if the following conditions are satisfied:

- the securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
- the non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with U.S. GAAP; and
- 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.

## M. AUDIT COMMITTEE OVERSIGHT

A registrant's audit committee should consider the registrant's use of non-GAAP financial measures in its financial reporting as part of its oversight responsibilities. The NYSE's general commentary to Section 303A.07(b) of the NYSE's Listed Company Manual states that, while the fundamental responsibility for the listed company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma" or "adjusted" non-GAAP information). Whether a registrant is listed on NYSE or Nasdaq, the audit committee should carefully review the use of non-GAAP information in the registrant's earnings releases.

# Appendix A: Regulation S-K, Item 10(e) and Regulation G

## § PART 229 – REGULATION S-K

### 229.10 GENERAL.

(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.

## § PART 244 – REGULATION G

### § 244.100 GENERAL RULE 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:
  - a. A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and

- 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 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:
  - a. The securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
  - b. 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
  - c. 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. A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and
- (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)

- a. 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.
- b. 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.
- c. 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.

(b) 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).

(c) 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 B: Compliance & Disclosure Interpretations

## QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

### SECTION 100. GENERAL

#### I. 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

#### II. 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]

### III. 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]

### IV. 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]

•

### V. 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]

#### **VI. 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**

#### **VII. 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]

•

### **VIII. 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]

### **IX. 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]

### **X. 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]

#### **XI. 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**

#### **XII. 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]

#### **XIII. 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]

#### **XIV. 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]

#### **XV. 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]

#### **XVI. 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]

**XVII. 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]

**XVIII. 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]

## **XIX. 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]

## **XX. 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]

## **XXI. 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]

## **XXII. Question 102.10(b)**

**Question:** 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]

### **XXIII. Question 102.10(c)**

**Question:** 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]

### **XXIV. 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]

### **XXV. 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

### XXVI. 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]

### XXVII. 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

### XXVIII. 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]

### XXIX. 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]

### XXX. 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]

**XXXI. 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]

**XXXII. 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]

**XXXIII. 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

### XXXIV. 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]

### XXXV. 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]



### **XXXVI. 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]

### **XXXVII. Question 105.04 [withdrawn]**

### **XXXVIII. 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]

### **XXXIX. 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]

### **XL. 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

### XLI. 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]

### XLII. 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]

**XLIII. 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]

**XLIV. 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

### XLV. 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

### XLVI. 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]

# Appendix C: Division of Corporation Finance – Financial Reporting Manual – Topic 8

## NON-GAAP MEASURES OF FINANCIAL PERFORMANCE, LIQUIDITY, AND NET WORTH

### 8100 USE OF NON-GAAP FINANCIAL MEASURES

(Last updated: 9/30/2008)

### 8110 Applicable Guidance

(Last updated: 12/31/2009)

#### XLVII. 8110.1 Authoritative guidance regarding the use of non-GAAP financial measures can be found in:

- a. Regulation G
- b. S-K 10(e)
- c. Exchange Act Release No. 47226, *Conditions for Use of Non-GAAP Financial Measures*

#### XLVIII. 8110.2 Staff guidance regarding the use of non-GAAP financial measures can be found in the Division of Corporation Finance’s Compliance and Disclosure Interpretations, *Non-GAAP Financial Measures*. The questions are grouped into the following categories:

- a. Section 100 – General
- b. Section 101 – Business Combination Transactions
- c. Section 102 – Item 10(e) of Regulation S-K
- d. Section 103 – EBIT and EBITDA
- e. Section 104 – Segment Information
- f. Section 105 – Item 2.02 of Form 8-K
- g. Section 106 – Foreign Private Issuers
- h. Section 107 – Voluntary Filers
- i. Section 108 – Compensation Discussion and Analysis/Proxy Statement (Last updated: 11/9/2016)

### 8120 Definition of a Non-GAAP Financial Measure

#### XLIX. 8120.1A non-GAAP financial measure is a numerical measure of a registrant’s *historical or future* financial performance, financial position, or cash flow that:

- a. 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 of the issuer; or
- b. includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable GAAP measure so calculated and presented.

**L. 8120.2 Some common examples of measures that meet the definition of non-GAAP measures include the following: (Last updated: 3/31/2013)**

- a. Funds from operations (FFO) (Non-GAAP C&DI Questions 102.01 and 102.02)
- b. EBIT / EBITDA / adjusted EBITDA (Non-GAAP C&DI Questions 102.09, 103.01 and 103.02)
- c. Adjusted revenues
- d. Broadcast cash flow (BCF)
- e. Free cash flow (FCF) (Non-GAAP C&DI Question 102.07)
- f. Core earnings
- g. Measures presented on a constant-currency basis (e.g., revenues, operating expenses, etc.) (Non-GAAP C&DI Question 104.06)

**LI. 8120.3 Measures of operating performance or statistical measures that fall outside the scope of the definition set forth above are not “non-GAAP financial measures”. Additionally, “non-GAAP financial measure” excludes financial information that does not have the effect of providing numerical measures that are different from the comparable GAAP measure. Examples of measures that are not non-GAAP financial measures include:**

- a. Operating and statistical measures (such as unit sales, number of employees, number of subscribers).
- b. Measures of profit or loss and total assets for each segment that are consistent with disclosures made in accordance with ASC Topic 280. (Non-GAAP C&DI Questions 104.01 through 104.06)
- c. Disclosure of expected or contracted indebtedness.
- d. Disclosure of amounts of repayments that have been planned but not yet made.
- e. Disclosure of estimated revenues or expenses of a new product line (so long as the amounts were estimated in the same manner as would be computed under GAAP). (Non-GAAP C&DI Question 104.05)
- f. Financial measures that are required to be disclosed by a system of regulation of a governmental authority or self-regulatory organization that is applicable to the registrant (such as different levels of capital required by banks). (Non-GAAP C&DI Question 102.12) (Last updated: 10/30/2020)
- g. Ratios or statistical measures that are calculated using exclusively one or both of:
  1. financial measures calculated in accordance with GAAP (such as earnings per share); and
  2. operating measures or other measures that are not non-GAAP measures (such as dollar revenues per square foot for hotels, same store sales, and revenues per slot machine for casinos, assuming that sales/revenues for each measure is based on GAAP numbers).

**8130 General Applicability and Requirements of Regulation G and S-K 10(e)**  
(Last updated: 12/31/2011)

	<b>Applicability</b>	<b>Requirements</b>	<b>Prohibitions</b>
<b>Reg G</b>	Applies whenever a registrant required to file reports under Section 13(a) or 15(d) of the Exchange Act (other than a registered investment company), or a person acting on the registrant’s behalf, discloses or releases publicly any material information that includes a non-GAAP financial measure. Typically, this information is	<ul style="list-style-type: none"> <li>• A presentation of the most directly comparable GAAP measure; and</li> <li>• A reconciliation of the differences between the non-GAAP measure disclosed or released with the most directly comparable GAAP measure. With regard to forward-looking information, a</li> </ul>	<ul style="list-style-type: none"> <li>• Reg G prohibits any registrant (or person acting on the registrant’s behalf) from making public a non-GAAP financial measure that, taken together with any information accompanying it, contains an untrue statement of material fact or omits to</li> </ul>

	<b>Applicability</b>	<b>Requirements</b>	<b>Prohibitions</b>
	furnished under Item 2.02 of Form 8-K. <sup>1</sup>	quantitative reconciliation is only required to the extent available without unreasonable efforts. If all of the information necessary is not available without unreasonable efforts, the registrant must identify the information that is unavailable and disclose probable significance.	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.
<b>S-K 10(e)</b>	Applies to a registrant's <i>filings</i> with the SEC  Ex: 10-K, 10-Q, 20-F, S-1, F-1	<ul style="list-style-type: none"> <li>• Presentation, <i>with equal or greater prominence</i>, of the most directly comparable GAAP measure;</li> <li>• A reconciliation of the differences between the non-GAAP measure and the most directly comparable GAAP measure;</li> <li>• A statement disclosing the reasons why management believes the presentation of the non-GAAP measure provides useful information to investors regarding the registrant's financial condition and results of operations; and</li> <li>• To the extent material, a statement disclosing the additional purposes, if any, for which management uses the non-GAAP measure.</li> </ul>	<ul style="list-style-type: none"> <li>• 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. This prohibition does not apply to EBIT and EBITDA used as liquidity measures.</li> <li>• Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent, or unusual, when (1) the nature of the charge or gain is reasonably likely to recur within 2 years or (2) there was a similar charge or gain within the prior 2 years.</li> <li>• Presenting non-GAAP financial measures on the face of the GAAP financial statements or in the notes.</li> <li>• Presenting non-GAAP financial measures on the face of any pro forma information required to be disclosed by Article 11.</li> <li>• Using titles or descriptions of non-GAAP measures that are the same or confusingly similar to GAAP titles.</li> </ul>

<sup>1</sup> Per Instruction 2 to Item 2.02 of Form 8-K, the requirements of S-K 10(e)(1)(i) apply to disclosures (furnished or filed) under Item 2.02 of Form 8-K.



8140 General Application of Regulation G and S-K 10(e) to Foreign Private Issuers

	Regulation G	S-K 10(e)
Foreign Private Issuers	<p>FPIs are exempt from Regulation G if three conditions are met:</p> <ul style="list-style-type: none"> <li>The securities of the FPI are listed or quoted on a securities exchange or inter-dealer quotation system outside the U.S.;</li> <li>The non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with U.S. GAAP; and</li> <li>The disclosure is made by or on behalf of the FPI outside the U.S., or is included in a written communication that is released by or on behalf of the FPI outside the U.S.</li> </ul> <p>Regulation G will not apply to disclosures made by or on behalf of the FPI notwithstanding the existence of one or more of the following circumstances:</p> <ul style="list-style-type: none"> <li>Disclosure is included in a written communication released in the U.S. as well as outside the U.S., as long as the communication is released contemporaneously with or after its release outside the U.S. and is not otherwise targeted at persons located in the U.S.;</li> <li>Foreign or U.S. journalists or other third parties have access to the information;</li> <li>Disclosures appear on one or more of a registrant’s websites, so long as the websites, taken together, are not available exclusively to, or are targeted at, persons in the U.S; or</li> <li>After disclosure of the information outside the U.S., the information is included in a submission on Form 6-K.</li> </ul>	<p>FPIs are subject to S-K 10(e) requirements with respect to use of non-GAAP measures in filings on Form 20-F or 1933 Act registration statements. However, a non- GAAP measure that would otherwise be prohibited under S-K 10 (e)(1)(ii) will be permitted in a filing if the measure is:</p> <ul style="list-style-type: none"> <li>Required or expressly permitted by the standard-setter that establishes the GAAP principles used in the registrant’s primary financial statements; and</li> <li>Included in the foreign private issuer’s annual report or financial statements used in its home-country jurisdiction or market.</li> </ul> <p>The exemption from the prohibitions under S-K 10(e)(1)(ii) does <u>not</u> cover situations where the measure is merely not prohibited by the foreign standard setter; it only applies where the standard-setter affirmatively acts to require or permit the measure. Note that these measures are still subject to the remaining requirements of S-K 10(e). (Non- GAAP C&amp;DI Question 106.01).</p>

**NOTE:** With respect to foreign private issuers whose primary financial statements are prepared in accordance with IFRS or a home-country GAAP, references to “GAAP” in the definition of a non-GAAP financial measure refer to the principles under which those primary financial statements are prepared. However, if a foreign private issuer calculates a non-GAAP measure derived from or based on a measure calculated in accordance with U.S. GAAP, then for purposes of the application of the non-GAAP rules, GAAP for that measure would be defined as U.S. GAAP.

The reference to “generally accepted accounting principles in the United States” in the FPI exemption from Regulation G refers to U.S. GAAP regardless of the accounting principles used in the primary financial statements.  
(Last updated: 12/31/2011)

**8200 [RESERVED]**  
*(Last updated: 10/30/2020)*

**8300 TANGIBLE BOOK VALUE PER SHARE [S-K 506]**  
*(Last updated: 9/30/2008)*

### **8310 Presentation of Net Tangible Book Value per Share**

In IPOs of common stock where there is substantial disparity between the public offering price and the offering price previously paid by officers, directors, promoters and affiliates (dilution), presentation of net tangible book value per share is required as part of the dilution table.

### **8320 Definition**

There are no rules or authoritative guidelines that define tangible book value. Tangible book value per share is used generally as a conservative measure of net worth, approximating liquidation value. The staff believes generally that tangible assets should exclude any intangible asset (such as deferred costs or goodwill) that cannot be sold separately from all other assets of the business, and should exclude any other intangible asset for which recovery of book value is subject to significant uncertainty or illiquidity.

### **8330 Staff Practice**

In some cases, the staff allows dual calculations of tangible book value. For example, some intangible assets (such as patents) may be sold separately, but the ability to recover their carrying value may be indeterminable. Also, some material deferred costs are accounted for as adjustments to the yield on specific assets or liabilities (debt costs or policy acquisition costs). The staff has allowed tangible book value per share calculations made with and without those assets, with appropriate explanation.

\* \* \* \* \*