



## **SEC Releases New and Updated Non-GAAP C&DIs**

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Reading Time : **2 min**

### **New Non-GAAP C&DIs**

Of the six new C&DIs, four relate to general application and two relate to presentation. They consider:

- when an adjustment comprising a non-GAAP measure may be considered normal or recurring and not misleading (Question 100.01)
- when a non-GAAP measure that has changed between periods is permissible without requiring prior-period adjustment in order to not be misleading (Question 100.02)
- whether a non-GAAP measure may exclude charges, but not gains, without being misleading (Question 100.03)
- whether a non-GAAP measure that substitutes individually tailored revenue recognition for that of GAAP revenue recognition is permissible (Question 100.04)
- specific examples of non-GAAP versus GAAP prominence disparity (Question 102.10)
- how the income tax effects related to adjustments to arrive at a non-GAAP measure should be calculated and presented (Question 102.11).

### **Updated Non-GAAP C&DIs**

All six of the updated C&DIs relate to presentation and clarify:

- how certain non-GAAP measures in the real estate industry (e.g., FFO) are defined and when their use is acceptable (Questions 102.01 and 102.02)
- when certain non-GAAP measures that are non-recurring, infrequent or unusual are permissible (Question 102.03)

- that whether non-GAAP per share data is prohibited depends on the substance of the measure and not management's characterization of the measure (Question 102.05)
- that free cash flow is a liquidity measure that must not be presented on a per share basis (Question 102.07); and
- that EBIT and EBITDA are non-GAAP measures that must not be presented on a per share basis (Question 103.02).

## **Action Items**

While much of the guidance largely is consistent with current common practices, companies should review closely the new C&DIs and consider whether to adjust their practices and disclosures in response to the new guidance. In doing so, companies should consider asking themselves the questions that Chair White posed in the above-noted keynote address at the 2015 AICPA National Conference, in which she discussed the use of non-GAAP financial measures:

- Why are you using the non-GAAP measure, and how does it provide investors with useful information?
- Are you giving non-GAAP measures no greater prominence than the GAAP measures, as required under the rules?
- Are your explanations of how you are using the non-GAAP measures – and why they are useful for investors – accurate and complete, drafted without boilerplate?
- Are there appropriate controls over the calculation of non-GAAP measures?

## **What to Expect Going Forward**

Companies should expect the Staff to scrutinize the use and presentation of non-GAAP financial measures and increasingly challenge companies through the comment and review process when the Staff believes a company's practices do not comport with the applicable rules, regulations and public guidance.

While the SEC clearly is hoping that companies self-correct any existing noncompliance, SEC officials have stated that they are considering additional rulemaking and even enforcement actions, as appropriate.

## Categories

Compliance

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