

SEC Removes Roadblocks to Use of Non-GAAP Measures in Filings

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New SEC staff guidance published this month indicates a more nuanced and sophisticated view of non-GAAP measures than has tended to apply since Regulation G was enacted in 2003. New Compliance & Disclosures Interpretations (C&DIs) replace previously published interpretations and permit companies to use non-GAAP measures to exclude even items that do not meet the SEC definition of “nonrecurring”. The C&DIs suggest that the staff increasingly recognizes that non-GAAP measures can be an important tool for giving investors insight into what is really going on behind the GAAP numbers. The new guidance also reflects an awareness that the staff’s prior view was causing companies to tell the story one way in its SEC filings and another way in press releases and other communications.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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