

Non-GAAP Financial Measures Subject to Additional Guidance

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On May 17, 2016 the SEC issued additional interpretive guidance on the use of non-GAAP financial measures. The additional guidance clarifies non-GAAP issues the SEC staff comments on frequently. In particular, the SEC expressed concern about misleading non-GAAP presentations and non-GAAP measures presented more prominently than the comparable GAAP measures.

The additional guidance identifies some potentially misleading non-GAAP practices, including:

- Using performance measures that exclude necessary, normal, recurring, cash operating expenses;
- Calculating non-GAAP earnings based on “tailored” accounting principles such as non-GAAP revenue that accelerates revenue recognition as though the revenue were earned sooner than for GAAP purposes.
- Calculating non-GAAP measures differently between periods without disclosing the change and the reasons for change;
- Excluding non-recurring charges without excluding non-recurring gains in non-GAAP measures; and
- Describing an eliminated charge or gain as non-recurring, infrequent or unusual if such charge is reasonably likely to recur when 2 years or there was a similar charge or gain within the prior 2 years.

The additional guidance also specifies some circumstances in which a non-GAAP measure would be deemed more prominent than the most directly comparable GAAP measure. These include:

- Omitting comparable GAAP measures from headlines or captions;
- Presenting a non-GAAP measure before presenting the most directly comparable GAAP measure, including such use in headlines or captions;
- Presenting a full income statement of non-GAAP measures;
- Presenting a non-GAAP measure in a presentation style (e.g., bold, underlined or larger font) emphasizing the non-GAAP over the comparable GAAP measures;
- Providing tabular disclosure of non-GAAP information without including the GAAP information in the same table or an equally prominent tabular disclosure;
- Describing non-GAAP measures (e.g., record performance, exceptional) without an equally prominent description of the comparable GAAP measure;
- Excluding the quantitative reconciliation to the most directly comparable GAAP measure for all forward-looking, non-GAAP measures in reliance on the “unreasonable efforts” exception of Regulation S-K, without disclosing that such reliance and omission may be material, and identifying the unavailable information and its probable

significance in a location of equal or greater prominence; and

- Presenting unbalanced discussion and analysis of non-GAAP versus GAAP presentations.

The foregoing summary does not highlight all of the SEC's additional guidance. Please see the SEC's full additional guidance and interpretations on non-GAAP measures [here](#).

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