**MSC Notice 2002-44**

**STAFF NOTICE 52-303**

# Non-GAAP Earnings Measures

## Purpose

This notice provides guidance to issuers who publish earnings measures other than those prescribed by Generally Accepted Accounting Principles ("GAAP").

## Problem Identified

It has become common practice for many issuers to publish measures of earnings other than those prescribed by GAAP ("non-GAAP earnings measures"). Issuers commonly include such measures in press releases but may also include them in Management's Discussion and Analysis ("MD&A"), prospectus filings and occasionally financial statements. Most non-GAAP earnings measures are derived from net income determined in accordance with GAAP and, by omission of selected items, present a more positive picture of financial performance. Terms by which non-GAAP earnings measures are identified include "pro forma earnings", "operating earnings", "cash earnings", "EBITDA", "adjusted earnings", and "earnings before one-time charges". These terms lack standard, agreed upon meanings and each may be used differently by different companies and even by the same company from period to period.

Staff are concerned that investors may be confused or even misled by non-GAAP earnings measures, particularly when they are not accompanied by adequate disclosure. Often such measures are not clearly defined, requiring readers to make assumptions as to their composition and how they reconcile to the GAAP financial statements. Further the terminology used to describe non-GAAP earnings measures may lead a reader to infer that they are standardized measures required to be disclosed.

Staff have observed instances of issuers reporting non-GAAP earnings measures that appear to be defined differently from quarter to quarter or from year to year. For example, "one-time losses" may be excluded in one quarter but "one-time gains" may be included in a subsequent quarter.

Frequently, issuers give greater prominence to one or more non-GAAP earnings measures than to net income determined in accordance with GAAP. Non-GAAP measures are often the primary focus of earnings releases. Such releases commonly include comparisons of non-GAAP measures to the previous quarter and to previously published guidance, both in aggregate and on a per share basis, together with absolute and percentage changes. GAAP net income is often presented as secondary to the non-GAAP measure and commonly lacks a similar level of analysis and comparative information. In some instances, issuers omit GAAP net income from earnings releases.

In many instances, issuers include in a single earnings release or corporate filing several similar non-GAAP measures that each differ slightly from the other (eg. "EBITDA" and "adjusted EBITDA"). This increases the potential for confusion among readers.

When an issuer considers certain items to be "non-recurring" or "one-time charges", and therefore removes them from GAAP net income or loss in arriving at an alternative measure of earnings, the issuer rarely discusses the nature of these charges and why they are not expected to recur in the future.

Staff have observed instances of issuers presenting non-GAAP earnings measures on the face of the income statement and elsewhere in the financial statements. Inclusion in financial statements of non-GAAP earnings measures is likely to be confusing to a reader who may legitimately expect the entire content of the financial statements to be in accordance with GAAP. The risk of confusion is greatest when the additional information is included on the face of the income statement where it may appear to compete with prescribed measures of earnings per share.

**Staff's Expectations**

Reliable and consistent financial statements prepared in accordance with GAAP provide investors with a clearly defined basis for financial analysis and comparison among companies. Staff recognize that non-GAAP earnings measures may be a useful means of providing investors with additional information to assist them in understanding critical components of an issuer's financial results. It is important, however, that such measures not be presented in a way that confuses or obscures the GAAP measures.

Staff remind issuers of their obligation to discuss in MD&A management's perspective on the critical components of the results of operations. Issuers should consider whether the separate presentation of non-GAAP earnings measures provides added benefit to readers given that the MD&A should highlight the relevant aspects of an issuer's operations.

Staff remind issuers of their responsibility to ensure that information they provide to the public is not misleading. Selective editing of financial information may be misleading if it results in the omission of material information. Staff caution issuers that regulatory action may be taken if issuers disclose information in a manner considered misleading and therefore potentially harmful to the public interest.

Staff expect issuers who choose to publish non-GAAP earnings measures to define the measures clearly, to demonstrate their relevance and to ensure that they do not have the potential to mislead investors. Specifically, issuers should:

1. state explicitly that the non-GAAP earnings measures do not have any standardized meaning prescribed by GAAP and are therefore unlikely to be comparable to similar measures presented by other issuers;
2. present prominently with the non-GAAP earnings measures the earnings measures for the period determined in accordance with GAAP;
3. describe the objectives of the non-GAAP earnings measures and discuss the reasons for excluding individual items required by GAAP to be included in determining net income or loss;
4. provide a clear quantitative reconciliation from the non-GAAP earnings measures to the GAAP financial statements, referencing the reconciliation when the non-GAAP earnings measures first appear in the disclosure document;

5. limit the number of non-GAAP earnings measures provided and avoid using multiple similar non-GAAP earnings measures that differ from each other only slightly;
6. present the non-GAAP earnings measures on a basis that is consistent from period to period and explain any changes in the composition of the measures when compared to previously published measures.

In staff's view, it is not appropriate to present non-GAAP earnings measures in the GAAP financial statements.

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