

Memorandum

SEC Chair White Alludes to SEC's Continued Focus on Non-GAAP Financial Measures

January 13, 2016

In a speech delivered last month at the American Institute of Certified Public Accountants (“AICPA”) national conference about maintaining high-quality and reliable financial reporting, Securities and Exchange Commission (“SEC”) Chair Mary Jo White suggested that the SEC will continue to scrutinize the use of financial measures that do not conform with U.S. Generally Accepted Accounting Principles (“GAAP”).¹ Noting that non-GAAP financial measures “are used extensively and, in some instances, may be a source of confusion,” Chair White stated that “[t]his area deserves close attention, both to make sure that [its] current rules are being followed and to ask whether they are sufficiently robust in light of current market practices.” She advised that finance and legal teams preparing financial reports, as well as audit committees, “should carefully attend to the use of [non-GAAP] measures and consider questions such as:

- 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?”

Speaking more generally, Chair White also indicated that one of the SEC’s “ultimate tools to ensure high-quality, reliable financial reporting is strong enforcement when the rules are not followed.” She stated that since she became the SEC’s Chair in April 2013, “the staff has reinvigorated its investigative and enforcement

¹ See Chair Mary Jo White, Keynote Address at the 2015 AICPA National Conference: “[Maintaining High-Quality, Reliable Financial Reporting: A Shared and Weighty Responsibility](#)” (Dec. 9, 2015).

efforts in this area,” doubling the number of issuer reporting and disclosure actions the SEC has brought from 53 actions in fiscal year 2013 to 114 actions in fiscal year 2015.

In light of Chair White’s comments, issuers and their financial and legal advisors should ensure that, to the extent they use non-GAAP financial measures, they are particularly careful in complying with the rules relating to their use and are comfortable defending their position if questioned by the SEC. As Chair White noted, audit committees should similarly ensure that they adequately oversee management’s use of non-GAAP measures.

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or yafit.cohn@stblaw.com, any other member of the Firm’s Public Company Advisory Practice.

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