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美國證管會監管信函對非 GAAP 與 GAAP 盈餘

可比較性之影響

The Effect of SEC's Comment Letters on the
Comparability of Non-GAAP and GAAP Earnings

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本論文係顏廷緯君 (R06722032) 在國立臺灣大學會計學系、所完成之碩 (博) 士學位論文，於民國 108 年 6 月 17 日承下列考試委員審查通過及口試及格，特此證明

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摘要



隨著非 GAAP 衡量 (Non-GAAP Earnings) 被廣泛使用，美國證券管理委員會 (SEC) 對此現象感到有所疑慮，認為非 GAAP 盈餘衡量可能會因為缺乏可比較性而對於投資人有所誤導。可比較性係會計資訊品質十分重要的一部份，為消弭非 GAAP 之盈餘衡量較不具可比較性之現象，美國證管會針對非 GAAP 之盈餘衡量實施了各種監管之手段。從 2003 年開始實施的 Regulation G、2010 年發佈之 C&DIs 以及後續所對外發佈之監管信函，皆為規範該種衡量方式的監管手段。已有大量的研究針對 Regulation G 以及 C&DIs 之實施，對於非 GAAP 盈餘衡量之影響有所探討，然而卻鮮少有文獻針對美國證管會出具之監管信函有所討論。

我們發現，當美國證管會針對公司所揭露非 GAAP 之盈餘衡量出具監管信函時，可有效的提升該公司非 GAAP 盈餘衡量之可比較性。且當公司收到針對非 GAAP 盈餘衡量之監管信函時，並不會對其 GAAP 之盈餘有所影響。我們亦針對該等實證結果進行穩健性測試，皆與我們的實證結果一致。因此證明了美國證管會所出具之監管信函係可提升公司所揭露之非 GAAP 盈餘衡量之可比較性。

關鍵詞：非 GAAP 盈餘、美國證管會、監管信函、可比較性

Abstract



As non-GAAP performance measures are widely used, the SEC has expressed concerns about this phenomenon and believes that non-GAAP earnings measures may be misleading to investors because of the lack of comparability. Comparability is an important part of accounting information quality. In order to diminish the non-GAAP earnings measurement, the SEC has issued various regulatory for non-GAAP earnings measurement. Regulation G, which was implemented in 2003, and C&DIs released in 2010, as well as filing reviews and comment letters issued afterward, are the regulation to regulate this alternative measurement. A large number of studies have been conducted on the release of Regulation G and C&DIs for non-GAAP earnings measurement, but few about comment letters issued by the SEC have been discussed.

We find that the SEC can effectively improve the comparability of the company's non-GAAP earnings measurement when it issues comment letters against the company's exposure to non-GAAP earnings. And when the company receives comment letters for non-GAAP earnings measurement, it does not affect the GAAP earnings. We also conduct robustness tests on these empirical results, which are consistent with our empirical results. This proves that the comment letter issued by the SEC can enhance the comparability of non-GAAP earnings measures disclosed by the company.

Keywords: *Non-GAAP Earnings, SEC, Comment Letters, Comparability*

目錄



謝辭	I
摘要	II
ABSTRACT	III
目錄	IV
圖表目錄	VI
第一章 緒論	1
第一節 研究動機	1
第二節 研究相關制度之背景	5
1.2.1 非 GAAP 盈餘之衡量相關制度背景	5
1.2.2 監管信函	13
第二章 文獻回顧與假說建立	21
第三章 研究方法及設計	27
第一節 實證模型及變數衡量	27
3.2.1 可比較性之計算	27
3.2.2 實證迴歸模型	28
第二節 研究樣本	30
第四章 實證結果與分析	32
第一節 敘述統計	32

第二節 實證結果.....	34
第三節 穩健性測試.....	36
第五章 結論.....	38
參考文獻.....	40
附錄.....	56
本篇研究使用名詞相關之翻譯.....	56
可比較性計算之範例.....	57
非 GAAP 盈餘揭露方式之範例.....	59
監管信函之範例.....	60
與非 GAAP 衡量顯眼程度議題之實例.....	60
刪除整份非 GAAP 盈餘之損益報表及現金流量相關衡量之實例.....	61
使用非 GAAP 衡量相關名稱之實例.....	62
與稅後淨額表達相關非 GAAP 盈餘之實例.....	63
與非 GAAP 衡量相關調節之實例.....	64
沙賓法案相關條文.....	65
401(b)之條文.....	65
408 之條文.....	65
REG. G RULE 100 之條文.....	67
REG. S-K (10)之條文.....	70
C&DIS 之條文.....	84



圖表目錄



圖 1、非 GAAP 有關之監管信函占全部監管信函之占比.....	45
圖 2、非 GAAP 之盈餘衡量相關監管手段之時間軸.....	45
圖 3、實證之觀察值年份分佈圖.....	46
表 1、變數定義表.....	47
表 2、樣本篩選表.....	48
表 3、監管信函統計數量表.....	49
表 4、相關係數表（以前後兩年為例）.....	50
表 5、敘述統計表（以前後兩年為例）.....	51
表 6、實證結果.....	52
表 7、額外測試（ONE WAY CLUSTER）.....	53
表 8、額外測試（自變數之替換）.....	54
表 9、收到與非 GAAP 盈餘無關之監管信函對非 GAAP 盈餘可比較性之影響.....	55

第一章 緒論



第一節 研究動機


近幾年來，非一般公認會計原則之財務衡量（Non-GAAP Earnings，以下簡稱非 GAAP 盈餘）被廣泛普遍的使用。以 G 法案（Regulation G，以下簡稱 Reg. G）之定義而言，非 GAAP 盈餘之衡量，係指將註冊公司原本依照 GAAP 所表達之經營績效、財務狀況或是現金流量，排除或調整了某些項目¹。

根據 Audit Analytics 之統計²，在 2006 年中，S&P500 的公司有 76% 的公司揭露其非 GAAP 盈餘於 8-K 或是 10-K 文件當中，而到了 2016 年，約有 96% 的 S&P500 公司有揭露其非 GAAP 盈餘。美國證券管理委員會（United States Securities and Exchange Commission, SEC，以下簡稱美國證管會）及財務會計準則委員會（Financial Accounting Standards Board, FASB）等監管單位多半認為，非 GAAP 盈餘衡量具有誤導投資人的特性，應該嚴格限制這種衡量方式的使用。然而公司經理人多半卻認為，公司可以透過將非經常性發生的盈餘組成項目排除或調整，使投資人更加了解公司的營運績效與核心價值。

美國證管會為了避免投資人被不適當的非 GAAP 盈餘衡量之相關資訊誤導，因此發佈了 Reg. G 等相關法案規定及遵循與揭露之解釋函令（Compliance and

¹ 根據 Black, Christensen, Ciesielski, and Whipple (2017) 調查，在 1990 年代，經理人較常排除一次性項目，包括處分資產損失、併購成本或是非經常性損益項目；在 2000 年後，雖然一次性項目之排除仍為大宗，但如折舊、攤銷費用、員工認股計畫之薪資費用等經常性項目卻大量增加。

² David McCann, Report Details Ubiquity of Non-GAAP Metrics, *CFO*, October 15, 2018，取自：
<http://www.cfo.com/financial-reporting-2/2018/10/report-details-ubiquity-of-non-gaap-metrics/>。



Disclosure Interpretations，以下簡稱 C&DIs)³來規範註冊公司⁴在揭露非 GAAP 盈餘的相關表達揭露及計算。且為了確保註冊公司有遵守這些規範，美國證管會對註冊公司所提交之文件（如 8-K、10-K 或 10-Q 等）進行稽查程序（Filing Reviews），來消除美國證管會對非 GAAP 盈餘衡量之揭露有所疑慮之部分。不過 Gomez, Heflin, and Wang (2017) 研究認為，透過稽查程序及發佈監管信函，並沒有辦法降低資訊不對稱性⁵。

財務報表之可比較性，在一般公認會計原則（Generally Accepted Accounting Principles，以下簡稱 GAAP）中係屬重要的強化品質特性之一，而這卻是非 GAAP 盈餘衡量被他人詬病之處。這來自於非 GAAP 盈餘衡量為經理人自行裁量，導致每間公司所揭露的非 GAAP 資訊及計算非 GAAP 盈餘之方式不盡相同⁶。財務會計準則理事會主席 Russell Golden 在 2017 年於其專欄⁷中表示，這樣的情況下，易干擾資訊使用者在比較不同公司間的非 GAAP 資訊，容易造成投資人之誤解。

美國證管會在面對此一自願性揭露透過兩種方式進行監控，其一是透過法規的方式進行監管，Reg. G 於 2003 年開始施行，以往的研究中（如 Heflin and Hsu


³ 美國證管會發佈於 2003 年施行之 Regulation G 及其相關修正案（Regulation S-K），並於 2010 年發佈 C&DIs，且後續亦對 C&DIs 有持續性的更新。

⁴ 註冊公司（Registrants）：公開發行之公司，或是投資人超過 500 位以及總資產達 1,000 萬者，則被稱為註冊公司。

⁵ Gomez et al. (2017) 在「刪除整份非 GAAP 損益表」之子樣本當中會使資訊不對稱上升。而「刪除整份非 GAAP 損益表」之規定，被規範在 C&DIs 當中。

⁶ 在附錄中我們列舉了 Google 以及 Uber 兩間公司之非 GAAP 盈餘揭露方式，我們可以發現，兩間公司在計算非 GAAP 盈餘之收入部分時，所調整之項目即有所不同。

⁷ 取自：<https://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176168752402>。



2008 ; Nichols, Grey, and Street 2005) 發現，透過法令之監管可以降低經理人以投機性的方式揭露非 GAAP 盈餘資訊之頻率。不過這樣的關聯性僅存在 2002 年至 2006 年間，根據 Chen, Lee, and Lo (2017) 之研究指出，近幾年來 S&P500 之公司在揭露非 GAAP 盈餘資訊有明顯的成長；另一管道係美國證管會對該部分進行稽查程序，並且針對稽查程序中有所疑慮之部分對個別公司發佈監管信函 (Comment Letters)，以作後續揭露的補正及解釋，美國證管會會與公司間持續通信討論該等議題，直到美國證管會之疑慮完全消除。

以往在探討監管信函的文獻當中，Brown, Tian, and Tucker (2018) 發現監管信函會增進公司揭露之品質，且 Chen et al. (2017) 之研究結果顯示美國證管會所發佈的監管信函可以顯著的提升非 GAAP 盈餘的揭露品質，這顯示監管信函能提升公司自願性揭露之品質。

而可比較性為重要的會計品質特性，若公司所揭露的財務資訊缺乏可比較性，則會影響投資人的決策判斷。故本篇的研究在於探討當公司收到美國證管會發佈的監管信函，是否會影響非 GAAP 盈餘之衡量的可比較性。我們將可比較性分成收到監管信函的前後兩年與前後四年，以利於觀察可比較性在收到監管信函前與後之改變。我們的實證研究發現，當公司收到與非 GAAP 盈餘之衡量相關的監管信函後，會對其公司所揭露之非 GAAP 盈餘衡量之可比較性有所影響，非 GAAP 盈餘衡量之可比較性會隨著收到監管信函而有所提升；同時，我們的實證結果顯示收到與非 GAAP 盈餘衡量有關之監管信函並不會對公司所揭露的 GAAP 盈餘衡量

之可比性有所改變。兩者研究之發現皆與我們的預期相符，在此證明了美國證管會對於非 GAAP 盈餘衡量之監管手段的成效。



後兩段我們將討論非 GAAP 盈餘之衡量以及稽查程序所發佈監管信函之背景；第二章為目前與非 GAAP 盈餘衡量以及監管信函相關的文獻回顧及本篇研究的假說建立；第三章為研究方法，我們將探討可比性之計算、實證研究之設計以及樣本之選取；第四章則為研究之結果，包含了敘述統計、實證結果以及相關的穩健性測試；最後一段為本篇研究之結論。



第二節 研究相關制度之背景

1.2.1 非 GAAP 盈餘之衡量相關制度背景


2001 年 12 月，美國證券管理員會表示⁸，針對註冊公司對外發佈與 GAAP 有所差異的財務衡量方式有所疑慮，而在當時，這樣的衡量方式被稱作為「擬制性盈餘 (Pro Forma)」，不過因為「擬制性財務資訊」這樣的名稱已於沙賓法案 (Public Company Accounting Reform and Investor Protection Act of 2002, SOX Act) 401(b) 中所使用，且其概念與美國證管會之相關規定及法規中概念稍有不同⁹，因此美國證管會對其公布的規範使用了「非 GAAP 盈餘之衡量」這樣的詞彙；再者，因有些國家對於「擬制性財務資訊」的定義也不甚相同¹⁰，例如有些國家對於「擬制性財務資訊」係指企業因合併或者會計政策改變等造成之可能影響所編製成的財務報表；或以台灣來說，「擬制性財務資訊」係指依照準則所編制，但尚未經會計師查核的財務資訊，而這樣的概念，就與本篇所討論的非以 GAAP 所編制之財務報表或財務資訊有所不同，故在本篇研究當中，使用「非 GAAP 盈餘之衡量」這樣的詞彙來表達非依照 GAAP 所編製之財務資訊。

非 GAAP 盈餘的揭露與衡量方式並未被如美國證管會這樣的監管機構加以禁止，但美國證管會質疑，若當非 GAAP 盈餘衡量與 GAAP 盈餘衡量，兩者所意涵之結果有所出入時，非 GAAP 盈餘的衡量與揭露方式是否會造成投資人的誤解。

⁸ SEC, Cautionary Advice Regarding the Use of “Pro Forma” Financial Information in Earnings Releases, December 4, 2001, 取自 <https://www.sec.gov/rules/other/33-8039.htm>。

⁹ 取自 https://www.sec.gov/rules/final/33-8176.htm#P69_8857。

¹⁰ IOSCO (2002), An IOSCO Technical Committee Release: Cautionary Statement Regarding Non-GAAP Results Measures 中有所討論。



他們認為，因為 GAAP 盈餘之衡量與非 GAAP 盈餘之衡量下所闡述之資訊性質有所不同，對於投資人而言，可能會較難以去比較不同公司之間，又或者同一公司所屬不同報導期間的財務資訊。然而，因為根據 GAAP 之規範，非 GAAP 盈餘之衡量方法是屬於選擇性揭露之項目，簡言之，揭露與不揭露的選擇權皆在公司本身，因此，美國證管會也希望公司可以在揭露非 GAAP 盈餘之衡量的重點著重於不要誤導投資人上。而在實務上也有個案¹¹因為使用非 GAAP 盈餘來重大誤導投資人，因此被美國證管會認定為詐欺行為，並依照證券交易法（Securities Exchange Act of 1934）處停止並終止（Cease and Desist）¹²之處分。

2002 年 7 月 30 日，因安隆案而生的沙賓法案亦針對了這類與 GAAP 不甚相同的衡量方式進行規範，其 401(b)中提到，此類資訊不可包含非為事實的重大資訊，且此類資訊不可刪除應包含於 GAAP 衡量下所產生之資訊的重大事實，並且必須將此類衡量方式之資訊調節至 GAAP 衡量下的財務狀況以及營運績效。除此之外，該法案亦明確的提及此類衡量方法的資訊是不可誤導社會投資大眾的¹³。


同年的 11 月 4 日，美國證管會根據沙賓法案 401(b)發佈了第 33-8145 號規則來規範有關與 GAAP 衡量下不同的衡量方法之相關揭露，也就是目前所稱的 Reg. G 以及其相關的修正案（Regulation S-K, Reg. S-K），此等法案於 2003 年 3 月開始

¹¹ Trump Hotels & Casino Resorts Inc. 因為使用非 GAAP 盈餘重大誤導投資人，成為美國第一間因為非 GAAP 盈餘揭露而被主管機關處罰之公司。

取自：<https://www.sec.gov/news/headlines/trumphotels.htm>。

¹² 停止並終止（Cease and Desist）係指美國一項禁止之命令，要求公司或個人終止某項行為，並且再也不得從事該行為，某則將面臨法律訴訟。

¹³ 原文可參考附錄。



施行。而該法案所創制之目的，係為了確保投資人在閱讀非 GAAP 盈餘衡量之相關財務資訊時，可以妥適的了解其資訊的相關內涵¹⁴。而該法案對非 GAAP 盈餘衡量之方式有了明確的定義，根據 Reg. G，「非 GAAP 盈餘及相關財務衡量」的定義為：「對於註冊公司之歷史性或未來性的經營績效、財務狀況或是現金流量的數字性衡量，且該衡量 (1) 排除、調整了某些項目，而這樣的排除及調整會對 GAAP 衡量下之報表有所影響，因這些項目是必須被包含在 GAAP 衡量下所編制之財務狀況表、損益表及現金流量表當中的； (2) 包含、調整了某些項目，而這樣的包含及調整會對 GAAP 衡量下之報表有所影響，因這些項目是必須被包含在 GAAP 衡量下所編制之財務狀況表、損益表及現金流量表當中的」。此外，美國證管會又對非 GAAP 盈餘衡量及相關財務資訊做了額外的解釋，他們認為非 GAAP 盈餘衡量方法的效果，是在於闡述與 GAAP 衡量下之財務報表不同的績效衡量指標，或是與 GAAP 下所衡量的現金流量或來自營運之現金流量有所不同的償債能力衡量。因此綜合上述，只要是從 GAAP 之衡量中排除、新增、或是調整任何一個組成項目，就會被稱為非 GAAP 盈餘之衡量。不過就稅息折舊及攤銷前淨利 (Earnings Before Interest, Taxes, Depreciation and Amortization, EBITDA) 而言，並不算非 GAAP 盈餘之衡量，不過若有在其中的計算調整任一項目，則就必須稱為「調整後稅息折舊及攤銷前淨利 (Adjusted EBITDA)」。針對這樣名稱上的區別，也是美國證管會注重的方向之一。

¹⁴ 取自：https://www.sec.gov/rules/final/33-8176.htm#P33_4269。




在近幾年來，非 GAAP 之盈餘衡量的使用程度大幅成長，在市場中也十分的普遍，即使揭露數量及頻率在 Reg. G 發佈後有短暫的降低，但隨後又立即升高。根據 Audit Analytics 之統計¹⁵在 2006 年中，S&P500 的公司有 76% 的公司揭露其非 GAAP 之盈餘衡量在 8-K 或是 10-K 文件當中，而到了 2016 年，約有 96% 的 S&P500 公司有揭露其非 GAAP 之盈餘衡量。而這樣的成長，也使各方對這種替代性的衡量方式產生興趣。舉例來說，美國證管會、財務會計準則委員會以及國際會計準則理事會 (International Accounting Standards Board, IASB) 皆想了解非 GAAP 盈餘之財務資訊大量之成長現象的原因，對國際會計準則 (International Financial Reporting Standards, IFRS) 或是對 GAAP 背後所隱含的意義為何；或是亦有許多學者探討非 GAAP 之盈餘衡量對投資人之影響等。

在美國，1990 年代後期至 2000 年代初期，非 GAAP 之盈餘衡量還尚未如此普遍，監管單位或是準則制定機構就已對這種與 GAAP 衡量有所不同的衡量方式保持懷疑的態度。他們認為，非 GAAP 之盈餘衡量是沒有受到規範的，且性質上來說，並不是如此的透明。舉例來說，美國證管會在 2001 年 12 月警告大眾投資人¹⁶非 GAAP 之盈餘衡量的資訊具有潛在風險。而當沙賓法案開始運作時，美國國會甚至讓美國證管會頒布規定¹⁷，以限制非 GAAP 之盈餘衡量的相關揭露。除了前段所提及的 2003 年實施之 Reg. G，美國證管會亦修正了 Reg. S-K 以確保公司揭露非

¹⁵ David McCann, Report Details Ubiquity of Non-GAAP Metrics, *CFO*, October 15, 2018, 取自：
<http://www.cfo.com/financial-reporting-2/2018/10/report-details-ubiquity-of-non-gaap-metrics/>。

¹⁶ SEC, Cautionary Advice Regarding the Use of “Pro Forma” Financial Information in Earnings Releases, December 4, 2001, 取自 <https://www.sec.gov/rules/other/33-8039.htm>。

¹⁷ 根據沙賓法案 401(b)之規定，美國證管會必須針對這種替代性的財務資訊給予規範之繩準。




GAAP 之盈餘衡量時，其顯眼程度 (Prominence) 不可高於使用 GAAP 衡量而得之財務資訊。而後，美國證管會在 2010 年 1 月發佈了 C&DIs 來規範非 GAAP 之盈餘衡量相關之揭露與表達，且其更新之頻率也相當之高，2011 年、2016 年以及 2017 年皆有做相關的更新。美國證管會前任強制執行部門主席會計師 Howard Scheck (Chief Accountant of the Division of Enforcement) 甚至將非 GAAP 之盈餘衡量視為「舞弊風險因子 (Fraud Risk Factor)」¹⁸，而美國證管會亦將檢查於提交文件中所揭露的非 GAAP 盈餘視為首要工作目標之一，來檢驗公司揭露非 GAAP 之盈餘衡量是否具有潛在誤導之疑慮。而在 2016 年，時任美國證管會主席 Mary Jo White 亦在演講中提到：「太多案例顯示非 GAAP 之盈餘衡量從原本的『補充資訊』，變成『主要資訊』傳遞給投資大眾，排擠了使用 GAAP 衡量而得之盈餘結果，甚至是取代了 GAAP 盈餘之表達揭露的地位」，對此 Mary Jo White 對非 GAAP 盈餘的大量增長感到十分憂心¹⁹。同樣於 2016 年，美國證管會首席會計師 (Chief Accountant) James Schnurr 亦在演講²⁰中提到，雖然證管會明確要求公司在揭露非 GAAP 之盈餘衡量時，不可誤導投資大眾，且亦在相關規範中明確提到不可使非 GAAP 之盈餘衡量的顯眼程度高於 GAAP 之衡量。然而他們卻發現，違反的個案呈現了「令人不安的成長 (Troubling Increase)」²⁰。同時他也在該演講中提到，非 GAAP 之盈餘衡量應該是用來作為補充 GAAP 盈餘衡量的額外資訊，而不是將非 GAAP 之盈餘衡量視為 GAAP 盈餘衡量的替代品，試圖將非 GAAP 之盈餘衡量看

¹⁸ Marie Leone, What's on the SEC's Radar? *CFO*, September 29, 2010, 取自：

<http://www.cfo.com/accounting-tax/2010/09/whats-on-the-secs-radar/>。

¹⁹ 取自：<https://www.sec.gov/news/speech/keynote-2015-aicpa-white.html> 中取得。

²⁰ 取自：<https://www.sec.gov/news/speech/schnurr-remarks-12th-life-sciences-accounting-congress.html>。



得比 GAAP 盈餘衡量來得重要。他認為，公司管理階層以及審計委員會應該要對非 GAAP 之盈餘衡量的增長有所警覺，重點不應僅僅是公司是否有遵守非 GAAP 之盈餘衡量的相關規定上，而是去思考為何公司端會認為非 GAAP 之盈餘衡量比 GAAP 之盈餘衡量還來得更能闡述營運績效，且為何對於投資人來說，非 GAAP 之盈餘衡量是有用的資訊。根據美國證管會的這些演講聲明以及 2016 年所更新的 C&DIs，美國證管會是鼓勵公司自我修正²¹、彌補那些不符合 GAAP 衡量的相關規定之部分。除此之外，美國證管會出具了許多針對公司所揭露的非 GAAP 之盈餘衡量有所疑慮的監管信給公司端，希望公司能遵守其相關的規範。前美國證管會首席會計師 Lynn Turner 也認為，非 GAAP 之盈餘衡量只是展現公司管理階層的投機心態，管理階層什麼都揭露，但唯獨不好的消息卻是隻字不提²²。

美國證管會並不是美國唯一對非 GAAP 之盈餘衡量感興趣的單位。由於越來越多的篇幅在針對非 GAAP 之盈餘衡量來做探討，財務會計準則委員會也對大量增長的非 GAAP 之盈餘衡量感到擔憂。有些會員質疑，若非 GAAP 之盈餘衡量與其財務資訊大幅度的增加，是不是代表需要一個更有組織性地表達方式，讓投資人能夠更簡單的了解這些每間公司都有所不同的績效衡量方式。財務會計準則委員會的主席 Russell Golden 也表示：「公司越來越傾向於使用非 GAAP 之盈餘衡量與相關之財務資訊是不是代表著 GAAP 之盈餘衡量也應該要更加進步了」。不過他

²¹ Michael Rapoport, SEC Probes Whether Companies Are Misusing Adjusted Earnings Metrics, *the Wall Street Journal*, October 27, 2016, 取自：<https://www.wsj.com/articles/sec-probes-whether-companies-are-misusing-adjusted-earnings-metrics-1477577108>。

²² Dow Jones Newswires, SEC Probes 4 Firms for Possible Abuses for Pro-Forma Results, *the Wall Street Journal*, June 19, 2001.



也認為，目前的非 GAAP 之盈餘衡量方式已略為喪失了可信度，因為其已忽略了 GAAP 衡量下的認列及衡量標準，並在反映交易實質時可能不是那麼精準²³。

而至於國際會計準則理事會，他們認為非 GAAP 之盈餘衡量對於整合性的國際會計準則財務報告是一項威脅。國際會計準則理事會主席 Hans Hoogervorst 即認為，雖然國際會計準則理事會對於從非 GAAP 之盈餘衡量的概念中有所借鏡，但他仍認為監管機關應該要嚴格控管非 GAAP 之盈餘衡量的使用，並且認為應該對於非 GAAP 之盈餘衡量有更明確的定義。他也指出，許多公司揭露這種替代性指標衡量，是 (1) 遠超過國際會計準則的；(2) 對於報告使用者而言是具有誤導性的；(3) 容易排除經常性發生之費損項目的；(4) 對國際會計準則衡量之部分沒有給予相當的顯眼程度的。而他也特別強調，若有規範明確的非 GAAP 盈餘及其財務衡量之標準，對投資人而言才是有效益的^{24 25}。

2005 年 5 月 19 日，國際證券委員會 (International Organization of Securities Commissions, IOSCO) 也發現越來越多公司選擇發佈這種公司獨特的衡量方式來衡量其財務資訊，而這樣的資訊通常會出現在盈餘宣告、年度季度報表等定期性報導


²³ 取自：<https://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176168752402>。

²⁴ 取自：

<http://archive.ifrs.org/Alerts/Conference/Documents/2015/Speech-Hans-Mind-the-Gap-speech-Korea-March-2015.pdf>、

<http://archive.ifrs.org/About-us/IASB/Members/Documents/Hans-Hoogervorst-EAA-Annual-Conference-11-May-2016.pdf>。

²⁵ 根據 Black, Christensen, Ciesielski, and Whipple (2017) 表示，雖然 GAAP 指的是美國一般公認會計原則，與 IFRS 也有所不同，但通常來說，我們不會因為原本是適用 IFRS，就將有所調整的衡量項目稱作 non-IFRS。普遍而言，這種替代性的財務指標泛稱為 non-GAAP。




中，或是於遞交給美國證管會的相關文件（如 8-K、10-K 或 10-Q）當中。而國際證券委員會認為，若是適當的使用這種衡量方法，是可以幫助投資人更有效的了解公司的財務狀況及經營績效。然而，國際證券管理委員會也發現了非 GAAP 之盈餘衡量方式會因公司之不同而有所不同，且有些公司甚至可能會無法妥當或是一致的去定義非 GAAP 之盈餘衡量的計算方法，在這樣的情況下，似乎就很容易模糊了 GAAP 衡量下所揭露的盈餘，且可能會無法完整、適當的闡述公司真實的財務狀況。因此他們認為，投資人在閱讀這類的財務資訊時，就必須更加的小心。同時，該委員會亦提到，公司在發佈這類非 GAAP 之盈餘衡量與其相關財務資訊時，應謹慎小心，以避免被視為故意誤導投資大眾²⁶。

不過對於公司管理階層或是分析師而言，非 GAAP 之盈餘衡量是有其存在之必要性的。根據審計品質中心（Center for Audit Quality, CAQ）在 2017 年舉辦的會議當中²⁷，與會的公司管理階層即表示揭露非 GAAP 之盈餘衡量的原因大致可歸納為（1）因應市場及分析師的需求；（2）對於闡述、報導公司核心價值的需求。分析師發現，非 GAAP 盈餘衡量及其財務資訊可以幫助他們更加了解公司的營運表現，並且對於預測公司長期之價值也有很大的幫助。且公司管理階層也認為，非 GAAP 之盈餘衡量與其財務資訊能有效的幫助他們表達公司的商業活動，使外部的資訊使用者得以藉由非 GAAP 之盈餘衡量來更加了解公司的核心價值及整體策略。他們透露，在衡量或揭露非 GAAP 之盈餘衡量時，為了不被視為誤導投資人

²⁶ IOSCO (2002), An IOSCO Technical Committee Release: Cautionary Statement Regarding Non-GAAP Results Measures 中有所討論。


²⁷ Center for Audit Quality (2018), A Roadmap for Audit Committees 中有所討論。



或是盈餘管理的手段之一，公司經理人花費了許多時間及精力在與審計委員會討論最妥適的揭露方法，甚至在某些個案當中，經理人對於非 GAAP 之盈餘衡量與其財務資訊所花費的時間比在討論 GAAP 之盈餘衡量來得多。許多公司表示他們必須建立與非 GAAP 之盈餘衡量相關的政策制度、編制程序以及相關的內部控制。不過他們也承認，有時在其耗費的精力與時間過多，只為了要迎合市場及報告使用者的需求。而對於投資人而言，雖然他們認為非 GAAP 之盈餘衡量與其相關財務資訊較能夠有效了解公司的營運能力及核心價值，但其衡量方法較缺乏可比較性，即使在同一個產業當中，如果非 GAAP 之盈餘衡量沒有適當的規範，這會使得他們很難去與其他公司做財務績效的比較。不過亦有研究指出，投資人在閱讀非 GAAP 之盈餘衡量時的反應，會比在閱讀 GAAP 之財務衡量的反應還來得好（Bhattacharya, Black, Christensen, and Larson 2003），且在評價上，非 GAAP 之盈餘衡量也比 GAAP 之盈餘衡量更具有實用性（Bradshaw and Sloan 2002）。

1.2.2 監管信函

對於非 GAAP 之盈餘衡量，美國證管會有三項管制措施。其一，係美國證管會所發佈的法案，如 Reg. G 及 Reg. S-K；其二，係美國證管會人員公開的演講，如前段所提及的美國證管會人員之演講，皆屬於美國證管會為了強調非 GAAP 之盈餘衡量與其相關財務資訊的揭露規範所作之聲明；其三，係本段所探討的監管信函。



稽查文件這個程序從美國證管會成立以來就一直執行²⁸，然而，在 2004 年之前投資人或其他利益第三方等都只能透過資訊自由法案 (Freedom of Information Act, FOIA, 亦稱情報自由法案等，以下簡稱 FOIA) 的許可來取得監管信函的內容。不過後來因越來越多人透過資訊自由法的許可程序來要求取得這些監管信函以及其回應，因此在 2004 年，美國證管會基於加強資訊透明化的原因，決議在 2004 年開始公開稽查程序之監管信函以及公司端的回應，這樣的決定，讓社會大眾可以更加了解美國證管會稽查程序的性質、時間、範圍及其結果²⁹。


此外在 2002 年沙賓法案通過之後，該法案 408 條明文規定³⁰美國證管會每三年至少要對同一間公司做一次稽查程序，因此使得稽查程序案件數量大量增加，而該程序主要是針對公司在所提交文件的揭露資訊是否允當。美國證管會公司財務部門 (Division of Corporation Finance) 會針對註冊公司所提交之文件 (如 8-K、10-K 或 10-Q 等) 的揭露，進行文件的稽查程序，美國證管會會對公司所做之揭露存有疑慮的部分對其註冊公司發佈監管信函，而監管信函之內容涵蓋了許多不同的種類，例如收入之認列、管理階層討論與分析 (Management's Discussion and Analysis) 對過去營運業績的評價與討論之相關問題，或是非 GAAP 之盈餘衡量與其相關財務資訊的揭露與表達方式等相關議題。通常，美國證管會會在監管信函中要求³¹ (1)

²⁸ 根據 Bozanic, Dietrich, and Johnson (2017)，稽查程序及監管信函長遠的歷史證據可以從 www.sechistorical.org 獲取資料。最久之前的資料可從 1930 年代可以取得，而當時的用字為「Letter of Comment」而非現在的「Comment Letter」，不過其本質是相同的。

²⁹ 取自：www.sec.gov/news/press/2004-89.htm。

³⁰ 完整條文可參考附錄。

³¹ 取自：<https://www.sec.gov/divisions/corpfin/cffil ingreview.htm>。



公司提供補充性的資訊來加強揭露的品質；(2) 在未來所遞交之文件中，必須針對這些問題做修正，不過因為基於成本效益原則，這個方法是通常是公司較不願執行的³²；(3) 針對被出具監管信函之文件做補正的動作。不過若是選擇在未來所遞交之文件中做修正，美國證管會也必須等到下一次對該公司的稽查才有辦法知道該公司是否真的有做出改善。而若是在稽查過程中並無發現任何疑慮，則美國證管會就會對該公司發出「完成稽查」字樣的信函。此種疑慮，可能包含公司基於資訊閱讀者得閱讀容易度，選擇不揭露或刪除某項特定資訊，或是美國證管會預期公司揭露的方向和公司本身揭露的方向有所不同。

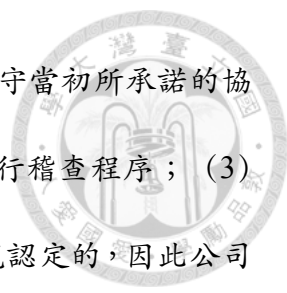
當公司收到監管信函時，根據 Bozanic et al. (2017) 之研究，通常的因應方式可能有 (1) 選擇不回覆美國證管會所發佈的監管信函。即使這樣的行為可能會導致該案件被移送至美國證管會的強致執行部門，不過因為美國證管會的預算與資源是相當有限的，尤其是他們稽查的公司數量眾多，可能會使美國證管會無法將資源投入於訴訟案件當中，而根據統計³³，該稽查過程所花費的成本就佔了美國證管會 2006 年 14% 的營運成本，且根據 2012 年的資料³⁴，公司財務部門大約有 80% 的人員在執行稽查程序；(2) 與美國證管會協商，承諾將在未來所提交之文件針對

³² 美國證管會會員 Shelley Parratt 於其演講提到，公司收到監管信函時，因為成本效益的原因，通常較不傾向修改已遞交的文件。取自：

<https://www.sec.gov/news/speech/2009/spch110909sp.htm>。

³³ 根據美國證管會於 2006 年發佈之「The SEC's 2006 Audit Report #401」表示，公司財務部門擁有 515 名員工，其中 80% 的部門員工參與稽查程序。該部門的營運成本為 1.25 億，而美國證管會全部營運成本為 8.88 億。

³⁴ 取自：<https://www.sec.gov/divisions/corpfin/cffilingreview.htm>。



監管信函所提及之疑慮做改善。不過，公司也有可能選擇不遵守當初所承諾的協議，畢竟在未來期間，美國證管會也不一定會選到該公司來進行稽查程序；(3) 因為公司經理人認為，美國證管會在進行稽查程序時是帶有主觀認定的，因此公司可能會與美國證管會來討論當期揭露的妥適性。而因為監管信函最根本的本質是希望公司可以揭露更多的資訊，因此美國證管會若是要求公司修正已提交文件之揭露，公司會與美國證管會協商，希望能透過揭露更多「補充性資訊」的方式來消除美國證管會對該揭露的疑慮，而不是更正已提交之文件所做之揭露；(4) 公司會根據美國證管會發佈之監管信函所推薦的改正方法來對已提交的文件進行更正

(5) 公司可能會要求擁有最基本的保密協議，因為公司明白這些資訊提供給美國證管會，最終都會公開於社會大眾，因此為了要避免敏感性的資訊被公開，公司可以要求擁有保密協議。根據美國證管會實務守則 (Commission's Rules of Practice) 的 Rule 83 相關規定³⁵，註冊公司可以提供兩份相關文件，其一是完整揭露內容的文件，而此類文件只能被用於稽查程序當中，在稽查程序結束後，該等文件就必須被銷毀或是返還給該公司。其二是經過改編、刪減或屏障某些較敏感內容的版本 (Redacted Version)，這種版本就會在稽查程序完成後被上傳至公開網站 (EDGAR) 給大眾投資人。

而若該公司選擇回覆美國證管會之監管信函，則公司端必須在 10 日內進行回覆。美國證管會與公司之間一來一往的回覆過程，會持續到解決美國證管會所有的疑慮，該公司就會收到「無其他評論 (No Further Comment)」的信件，隨後這些

³⁵ 取自：<https://www.sec.gov/foia/conftrat.htm>。

監管信函以及公司端之回覆會被上傳至美國證管會 EDGAR 系統當中，供大眾投資人閱讀及使用。這樣的程序，可以讓美國證管會確保公司在所有重大方面，皆有依照規範來提交文件，且也可以透過監管信函書信的往來，讓美國證管會更加了解公司的營運核心以及產業狀況。

美國證管會執行稽查程序的頻率也越來越頻繁，案件數量也十分龐大。根據美國證管會官方資料³⁶，在 2017 年中即已針對 4,200 間左右的公開發行公司進行稽查程序。且根據其他研究表示，美國證管會對其註冊公司所發出的監理信函頻率相當的高，2002 年至 2012 年的稽查程序當中，有三分之二的稽查程序有發出監管信函，而在 2013 年，大約有 54% 的稽查程序導致公司被首次出具監管信函³⁷，在 2005 至 2014 年間，平均每一個會計年度會有大約 40% 的公司收到監理信函，而每年信函的數量大概介於 4,000 至 8,000 封^{38 39}，因此許多文獻也針對美國證管會發佈之監管信函進行研究，不過大多針對與 GAAP 之衡量有關之議題，或者是首次公開發行的監管信內容來進行討論，對於非 GAAP 之盈餘衡量相關之議題，就較少人做探討。


³⁶ SEC, Agency financial report fiscal year 2017，

取自：<https://www.sec.gov/files/sec-2017-agency-financial-report.pdf>。

³⁷ 根據 Bozanic, Dietrich, and Johnson (2017) 之統計，在 2013 年，約有 54% 的稽查程序使註冊公司首次被出具監管信函。

³⁸ Heese, Khan, and Ramanna (2017) 表示，在 2012 年至 2014 年間，平均一年會有約 40% 的公司收到監管信函。

³⁹ 陳坤志 (2002) 表示，在 2012 年至 2014 年間，每年監管信函的數量大約介於 4,000 至 8,000 封。



不過如前段所述，非 GAAP 之盈餘衡量近年來大量增長，而此類替代性的衡量方式大多也都被呈現在 8-K 文件當中，因此，美國證管會針對非 GAAP 之盈餘衡量的稽查程序也逐漸增加，對公司發布與非 GAAP 之盈餘衡量有關的監管信函也越來越多。根據 Audit Analytics 統計，即使所發出的監管信函總數量下降，但與非 GAAP 之盈餘衡量的監管信函佔比卻逐步上升。且也有統計發現⁴⁰，與非 GAAP 之盈餘衡量的監管信函在全部的監管信函當中，佔比是最高的。因此我們可以發現，美國證管會對於非 GAAP 之盈餘衡量也越來越重視。我們也將相關資料整理於表 3 與圖 1 當中。表 3 係將所有文件 (8-K、10-K 及 10-Q) 中，有被美國證管會出具與非 GAAP 相關之數量以及全部主題監管信函的數量，以及兩者間的比率，並且將其繪製成趨勢圖如圖 1，我們可以從圖 1 中的趨勢發現，在 2016 以及 2017 年與非 GAAP 相關議題的佔比越來越多，也證明了美國證管會對非 GAAP 盈餘衡量的關注越來越高。

(插入表 3)

(插入圖 1)

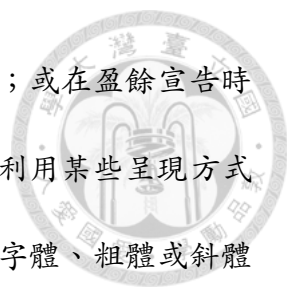
根據 Audit Analytics 的分析⁴¹，非 GAAP 之盈餘衡量的顯眼程度是美國證管會最為重視的。根據 Reg. S-K⁴²，非 GAAP 之盈餘衡量的顯眼程度不可高過於 GAAP 之盈餘衡量，否則將會誤導大眾投資人，且在 C&DIs⁴³中，更加說明了何謂顯眼程

⁴⁰ 統計數據來自於 Deloitte (2017)

⁴¹ 取自：<https://blog.auditanalytics.com/trends-in-sec-non-gaap-comment-letters-2016-2018/>。

⁴² 關於顯眼程度之議題，於 Reg .S-K 10(e)(1)(i)(A)中規範，其原文與實際案例可參考附錄。

⁴³ 關於顯眼程度之議題，於 C&DIs 之 Q102.10 中有所規範，其原文可與實際案例參考附錄。



度相關問題。舉例來說，提供完整的非 GAAP 盈餘衡量之報表；或在盈餘宣告時只公佈了非 GAAP 盈餘衡量，卻刪除了 GAAP 之盈餘衡量；或利用某些呈現方式以讓閱讀者更容易看到非 GAAP 之盈餘衡量方法，例如較大的字體、粗體或斜體等；或將非 GAAP 之盈餘衡量置於 GAAP 盈餘衡量之前；或將非 GAAP 之盈餘衡量繪製成表，然而 GAAP 盈餘衡量卻無；又或者是對於非 GAAP 之盈餘衡量的討論多過於 GAAP 衡量的討論。以上等舉例，皆會讓使用者誤以為非 GAAP 盈餘較為重要，進而產生顯眼程度的問題。而監管信函就會針對此些部分對公司進行提問。再者，就是希望公司端提供更多的資訊，以解釋公司對於非 GAAP 之盈餘衡量揭露方式之原因，以利大眾投資人能獲得更完善之資訊。

再者，美國證管會會對公司計算非 GAAP 之盈餘衡量的方法有所質疑，例如在認列收入時的時點，與 GAAP 所規定的時點並不一致，美國證管會就會在監管信函當中提問，希望公司可以再更進一步的說明其非 GAAP 之盈餘衡量的計算方式。又或者會去質疑公司在計算非 GAAP 之盈餘衡量時，將一般性、重複性或營業所需的費損排除之原因為何，針對這個部分，C&DIs 於其第 100.01 中提及⁴⁴，美國證管會雖並未對其嚴格的禁止，但希望公司將這些項目排除時，可以詳細解釋其被排除之原因。而根據 C&DIs 第 100.03 所示⁴⁵，若只排除費損，但卻無排除其相關的收益，這種排除項目的不一致性可能會造成投資人被誤導的現象，因此若有

⁴⁴ 關於重複性、一般性及營業所需之費損排除之相關議題，於 C&DIs 之 Q100.01 中有所規範，其原文可參考附錄。

⁴⁵ 關於排除項目一致性之相關議題，於 C&DIs 之 Q100.03 中有所規範，其原文可參考附錄。

此狀況發生，美國證管會就會在監管信函當中通知公司對此排除項目不一致的狀況有所改進。



我們在圖 2 中整理了非 GAAP 之盈餘衡量相關監管手段之時間軸。與非 GAAP 之盈餘衡量之監管信函有關之範例可參考附錄。

(插入圖 2)


第二章 文獻回顧與假說建立



非 GAAP 盈餘之衡量的研究，大約可以分成投機性 (Opportunism) 以及資訊性 (Informativeness) 兩個脈絡。美國證管會前任首席會計師 Lynn Turner 提到，非 GAAP 之盈餘衡量只是展現公司管理階層的投機心態，管理階層什麼都揭露，但唯獨不好的消息卻是隻字不提⁴⁶。他認為公司經理人會利用自願性揭露的方式，只揭露對於公司來說得好消息。質疑投機性的以往研究當中，Bowen, Davis, and Matsumoto (2005) 以及 Elliott (2006) 就在研究中發現，經理人有時會有意圖性的強調非 GAAP 之盈餘與其財務衡量。而 Guillamon-Saorin, Osma, and Jones (2012) 就在其研究中發現，當公司經營表現較不好時，經理人會有策略性的強調該公司的非 GAAP 盈餘衡量。根據 Graham, Harvey, and Rajgopal (2005) 之調查，他們也發現當公司的 GAAP 盈餘較為疲弱時，經理人就會過度的去強調非 GAAP 盈餘衡量。Walker and Louvari (2003) 檢測公司會揭露非 GAAP 盈餘的原因，發現有時是為了將原本在 GAAP 衡量下的損失調整到非 GAAP 衡量下的獲利方才揭露該衡量。此外，Black and Christensen (2009) 亦發現，經理人有時會藉由非 GAAP 之盈餘的排除項目，將原本在 GAAP 計算下會產生的損失轉換成以非 GAAP 計算下獲利的情況，藉此創造出高於分析師預期的現象。


支持非 GAAP 盈餘衡量較具有資訊性的研究認為，對於資訊使用者而言，非 GAAP 盈餘相較於 GAAP 所提供的盈餘資訊更具有資訊攸關性。Black, Christensen, Kiosse, and Steffen (2017) 的研究顯示，公司經理人在計算非 GAAP 之盈餘時所做

⁴⁶ Dow Jones Newswires, SEC Probes 4 Firms for Possible Abuses for Pro-Forma Results, *the Wall Street Journal*, June 19, 2001.




的調整，是可以增加盈餘組成項目之資訊價值。他們發現對於該年度來說，新的調整項目之品質，通常會較每年都重複排除的項目之品質來得好；且利用 De Franco, Kothari, and Verdi (2011) 對於可比較性的衡量方式發現，非 GAAP 之盈餘衡量較能反映公司核心營運狀況，且能增加與其他公司間的可比較性，因此大部分的非 GAAP 之盈餘及其財務衡量是具有資訊價值，而非意圖誤導投資大眾的。Bradshaw and Sloan (2002) 研究中發現，非 GAAP 之盈餘衡量也比 GAAP 之盈餘衡量對於評價及評估上更具有實用性。Johnson and Schwartz (2005) 也指出，投資人並不會因為公司揭露非 GAAP 盈餘衡量而有所誤導。

在探討非 GAAP 盈餘投機性的文獻中，有不少研究針對制度規定的設定，對於經理人投機性之動機是否有抑制的效果，這類的文獻多數起因於美國證管會對於在非 GAAP 下衡量盈餘的揭露方式有所疑慮，為保護投資人使用該等盈餘資訊時不被公司所誤導，美國證管會頒布相關法案及規定（如 Reg. G 以及相關修正案 Reg. S-K）規範公司揭露非 GAAP 盈餘衡量的方式。許多研究在探討相關規範法案對於非 GAAP 之盈餘衡量之揭露品質的影響。如 Heflin and Hsu (2008)、Nichols et al. (2005) 及 Kolev, Marquardt and McVay (2008) 的研究發現非 GAAP 之盈餘與其相關衡量的揭露數量在一開始呈現短暫的下降。而 Bentley, Christensen, Gee, and Whipple (2018) 及 Black, Black, Christensen, and Heninger (2012) 在其研究中指出，即使在 Reg. G 施行以後揭露數量略為下降，但隨即非 GAAP 之盈餘與其相關衡量的揭露數量又呈現了穩定的成長。此外，Black et al. (2017) 發現非 GAAP 之盈餘與其財務衡量揭露的品質隨著 Reg. G 的施行以來呈現顯著的成長。而 Kolev et al. (2008) 也在其非 GAAP 盈餘之排除項目的研究中發現，在 Reg. G 施行以後




排除項目資訊品質也大幅提升，此外該研究也顯示，Reg. G 的施行也造成了那些原本排除項目品質不好的公司停止揭露非 GAAP 之盈餘與其財務衡量。Bowen et al. (2005) 發現隨著美國證管會對非 GAAP 之盈餘與其財務衡量的關注程度增加，使得公司在揭露此種財務衡量的顯眼程度議題有所改善。美國證管會亦在 2011 年發布 C&DIs，針對 Reg. G 所作之規範有額外解釋。Bond, Czernkowski, Lee, and Loyeung (2017) 就發現，不只在 Reg. G 施行後，非 GAAP 之盈餘衡量的揭露品質有所提升，美國證管會在 2011 年所發佈的 C&DIs 亦可以提升非 GAAP 之盈餘衡量的揭露品質。

另一種監管手段則是透過對個別公司出具監管信函。Duro, Heese, and Ormazabal (2019) 首先針對在美國證管會開始將監管信函之內容上傳到公開平台上供大眾投資人使用，對於資本市場的反應做研究探討。他們發現，當美國證管會於 2004 年首次將監管信函上傳至 EDGAR 後，資本市場對此的反應顯著增加。且根據 Cunningham, Schmardebeck, and Wang (2016) 之研究，他們發現當公司收到來自美國證管會之監管信函，會使得該公司承受較高之借款利率，且 Johnston and Petacchi (2012) 發現，投資大眾對於監管信函所產生之資訊皆有所反應，即有收到美國證管會所出具之監管信函代表公司揭露的品質較差。Bozanic et al. (2017) 則認為，雖然市場認為收到監管信函是不好的警訊，但對公司後續的資訊揭露卻是有正向幫助，在他們的研究中發現在當公司因收到監管信函而加強其揭露，會使資訊不對稱性下降，對投資人之資訊透明度會有所加強。不過，在 Johnston and Petacchi (2012) 的研究當中發現，雖然市場會對監管信函有所反應，但對公司經理人後續所做出的自願性揭露之品質並無影響。而在探討監管信函對非 GAAP 盈餘衡量的



研究當中，Gomez et al. (2017) 在其研究中檢測美國證管會對個別公司發佈與非 GAAP 盈餘衡量之監管信函，對於資訊環境的影響。其研究方法係將監管信函知內容拆分成四個樣本群體，而分類方式係依照監管信函中所提及與非 GAAP 盈餘衡量所要求的四個相關議題，分別為：(1) 將整份非 GAAP 盈餘衡量之損益報表刪除；(2) 將非 GAAP 之盈餘衡量調節至 GAAP 之盈餘衡量；(3) 對於所揭露之非 GAAP 盈餘衡量之額外解釋；(4) 修正非 GAAP 之盈餘及其相關財務資訊之呈現方式，分別檢測在收到該等監管信函後，公司所揭露的非 GAAP 盈餘衡量及其相關財務資訊產生的資訊環境之改變。該研究發現，對於將整份非 GAAP 盈餘之損益報表刪除會使得資訊不對稱性上升，且非 GAAP 盈餘衡量之資訊富含性會下降。而在其他樣本群體當中皆不顯著，對於資訊不對稱性及資訊富含性皆無影響。他們認為，這與公司經理人宣稱非 GAAP 盈餘與其相關財務資訊得以提供更具有資訊價值之看法一致，對於美國證管會所做關於非 GAAP 盈餘及其相關財務衡量之規範可能有所矛盾。

非 GAAP 盈餘與其相關財務衡量，較被詬病的部分就是每間公司計算之方式有所不同，對於比較公司與公司之間可能顯有困難。監管機關認為非 GAAP 之盈餘係如此不具可比較性之財務衡量，可能會導致對於財務資訊使用者之誤導。且根據 Bhattacharya et al. (2003) 以及 Bradshaw and Sloan (2002) 或是 Black et al. (2012) 等皆在其研究中指出，投資人對於非 GAAP 盈餘之反應，較對 GAAP 盈餘之反應還來得好，因此投資人如何正確、不被誤導的使用該等資訊就更為重要。



通常監管機關在決定實施某項監管手段時，即係希望可以保障投資大眾，解決他們認為應予以進步之處。非 GAAP 盈餘可能較不具有可比較性，這來自於各家公司所揭露的非 GAAP 盈餘衡量資訊皆有所不同，而 Bozanic et al. (2017) 指出美國證管會所發佈的監管信函可增進公司隨後的資訊性，且 Chen et al. (2017) 亦指出監管信函可以提升非 GAAP 盈餘衡量之資訊品質。因此我們認為美國證管會對個別公司發佈與非 GAAP 盈餘衡量相關之監管信，會減少公司之間在揭露非 GAAP 之盈餘衡量時不具可比較性的現象。因此我們發展了假說 1a 如下：

假說 1a：在其他條件不變下，收到與非 GAAP 盈餘有關之監管信函，會與公司揭露之非 GAAP 盈餘之可比較性呈現正向關係。

Johnston and Petacchi (2012) 的研究指出，監管信函對公司經理人後續所做之自願性揭露並無影響。且在以往可比較性之改變的研究（如 Yip and Young 2012；Cascino and Gassen 2015）皆較著重不同會計準則之適用下，是否會造成投資人資訊使用上的差異，但在我們的研究當中，皆屬於適用美國所制定的會計準則。GAAP 為統一的會計系統，在同一準則下會影響可比較性的原因，應只有各公司所面臨之不同的產業與經濟事件、公司本身體質差異或是公司所選擇之會計政策不同等，且依 De Franco et al. (2011) 之研究，可比較性係公司會計系統所產生之差異。但在與非 GAAP 有關之監管信函當中，這些因素皆不是被提及或是有所疑慮之議題，因此公司所揭露之 GAAP 盈餘的可比較性，應不會受到非 GAAP 盈餘有關之監管信函影響，故我們認為，當公司收到與非 GAAP 盈餘有關之監管信函時，應對其公司之 GAAP 盈餘衡量之可比較性並無影響，且為補強假說 1a，故我們發展假說 1b 如下：

假說 1b：在其他條件不變下，收到與非 GAAP 盈餘有關之監管信函，不會
對 GAAP 盈餘之可比較性有所影響。





第三章 研究方法及設計

第一節 實證模型及變數衡量

3.2.1 可比較性之計算

我們採用 De Franco et al. (2011) 之方式來衡量可比較性⁴⁷。根據該文獻表示，若兩間公司在一組相同性質的經濟事件下，且會計系統處理方式若為相似，則代表雙方財務報表的可比較性較高。而公司使用會計系統處理經濟事件，並且產出財務報表之行為，可用下列公式表達。

$$F/S_i = f_i(\text{Economic Events}_i) \dots\dots (1)$$

式 (2) 係將 i 公司第 t 期以來之前 16 季的股票報酬率 ($Return_{it}$) 以及會計盈餘 ($Earnings_{it}$ ，每股盈餘除以股票市價) 帶入，並且得出 $\hat{\alpha}_i$ 與 $\hat{\beta}_i$ ，以代表 i 公司之會計系統。

$$Earnings_{it} = \alpha_i + \beta_i Return_{it} + \varepsilon_{it} \dots\dots (2)$$

在式 (3) 中，作者認為將 $Return_{it}$ 作為經濟事件的代理變數，當該經濟事件發生，且透過該公司之會計系統處理，即可得出預期盈餘 ($E(Earnings)_{iit}$)。

$$E(Earnings)_{iit} = \hat{\alpha}_i + \hat{\beta}_i Return_{it} \dots\dots (3)$$

⁴⁷ Black, Christensen, Ciesielski, and Whipple (2018) 在研究中，亦利用 De Franco et al. (2011) 可比較性之算法計算非 GAAP 盈餘之可比較性。

同理，為了估計出所產生之預期盈餘的相似程度，將 i 公司所發生之相同經濟事件 ($Return_{it}$) 帶入式 (4) 中。即代表若第 j 間公司第 t 期發生了 $Return_{it}$ 之經濟事件，則 j 公司會使用他們的會計系統 ($\hat{\alpha}_j$ 與 $\hat{\beta}_j$) 產生出 $E(Earnings)_{ijt}$ 之結果。

$$E(Earnings)_{ijt} = \hat{\alpha}_j + \hat{\beta}_j Return_{it} \dots \dots (4)$$

De Franco et al. (2011) 將 i、j 公司之間的可比較性，定義為在 16 季中，i、j 公司預期盈餘之差異，且將該衡量取負號以便觀察，因此產生了以下可比較性衡量之方程式：

$$Comparability_{ijt} = -\frac{1}{16} \times \sum_{t-15}^t |E(Earnings_{iit'}) - E(Earnings_{jtt'})| \dots \dots (5)$$

上式中， $E(Earnings_{iit'})$ 代表，在 t 期，i 經濟事件發生，根據 i 公司之會計系統所產生之盈餘； $E(Earnings_{jtt'})$ 則代表，在 t 期，i 經濟事件發生，根據 j 公司之會計系統所產生之盈餘。當式 (5) 數值越大，則代表 i、j 公司之間可比較性越高。而配對的選取方式為是否為相似產業 (SIC code 2-digit)，且會計年度結束之月份是否為相同月份。接著，將每年度第 i 間公司與同一產業中所有公司之可比較性排序後，選取可比較性前四大之平均以及可比較性之中位數以作為衡量之依據。

3.2.2 實證迴歸模型

為檢驗假說 1a 公司收到監管信函是否會對其非 GAAP 盈餘衡量之可比較性有所提升，以及假說 1b 公司收到監管信函是否會對其 GAAP 之盈餘衡量之可比較性有所影響，我們建立以下模型：

$$COMP_{it} = \alpha + \beta_1 POST_{it} + \beta_n CONTROL_{it} + \varepsilon_{it} \dots \dots (5)$$

於假說 1a 中， $COMP_{it}$ 代表 i 公司於 t 期之非 GAAP 盈餘衡量之可比較性； $POST_{it}$ 為 i 公司於 t 期收到與非 GAAP 盈餘衡量之監管信函，前兩年（四年）之 $POST_{it}$ 為 0，後兩年（四年）之 $POST_{it}$ 為 1。



於假說 1b 中， $COMP_{it}$ 代表 i 公司於 t 期之 GAAP 盈餘衡量之可比較性； $POST_{it}$ 為 i 公司於 t 期收到與非 GAAP 盈餘衡量之監管信函，前兩年（四年）之 $POST_{it}$ 為 0，後兩年（四年）之 $POST_{it}$ 為 1。

我們參考了 Francis, Pinnuck, and Watanabe(2014) 及 Cascino and Gassen(2015) 之文獻，選取了與可比較性計算有關之控制變數，如銷貨收入標準差、營業活動現金流量之標準差、銷貨收入成長率、營業活動現金流量、市價對帳面價值比率、資產報酬率、負債比率、公司規模、發生淨損之機率以及是否為四大會計師事務所所查核，不過因為文獻中並未對控制變數之方向有所預期，且未對控制變數有額外之討論，因此我們在本篇研究當中，亦不預測控制變數之方向。完整之變數定義可參考表 1。

(插入表 1)




第二節 研究樣本

我們採用 Gomez et al. (2017) 的選取方法，將樣本著重在針對盈餘宣告時所發佈非 GAAP 盈餘衡量之監管信函上，也就是針對美國證會對 8-K 文件中的非 GAAP 盈餘與其相關財務衡量所出具之監管信函。其一，是因為 Louis, Robinson, and Sbaraglia (2008) 及 Davis and Tama-Sweet (2012) 於先前之研究發現，相較於 10-K 或 10-Q 文件，投資人在盈餘宣告時能較有效率的獲得資訊，並且對市場所做出的反應更大；再者，Black et al. (2017) 先前有關於非 GAAP 之盈餘衡量的研究也都著重於盈餘宣告，因為非 GAAP 之盈餘衡量通常會被揭露於 8-K 有關盈餘宣告的文件當中。

首先，我們選取了 Compustat 資料庫中 2000 年至 2017 年之公司資料。而可比性計算之資料係從 I/B/E/S 資料庫中所取得，因此我們將該資料庫中無法計算可比性的觀察值刪除，而因為可比較性衡量的計算方式，係要取得前 16 季的非 GAAP 盈餘衡量的資料，因此會刪除掉許多遺漏值。控制變數之資料係從 I/B/E/S 資料庫以及 CRSP 資料庫中取得，我們亦將遺漏值刪除。

接著，我們使用 Audit Analytics 中監管信函之資料庫，辨認出所有與非 GAAP 之盈餘衡量且針對 8-K 盈餘宣告之文件而發佈的監管信函。將樣本期間定義在 2000 年至 2017 年。雖然美國證管會於 2004 年才於其資料庫中公開監管信函之內容，但為了要觀察前後年度之比較，因此將最早的樣本定義在 2000 年開始。



再者，我們選定每一註冊公司最一開始收到監管信函的年度作為樣本點⁴⁸，收到的監管信函之後兩年（四年）視為收到後（POST=1），而其前兩年（四年）視為收到前（POST=0）。以前後兩年之樣本來說，若一間註冊公司於 2009 年及 2013 年均收到與非 GAAP 盈餘衡量之監管信函，則我們會將樣本選取著重於 2009 年所收到的監管信，2007 年及 2008 年為收到前（POST=0），2009 年及 2010 年則視為收到後（POST=1），而 2013 年的部份將會從觀察值中予以刪除，因此同一間公司最多的觀察值即為 4 個觀察值⁴⁹。不過為了再更仔細的看出其變化，因此我們除了觀察前後兩年之變化，亦會觀察收到監管信函前後四年之影響。

（插入表 2）

⁴⁸ 因根據 Gomez et al. (2017) 之主要研究，係取收到監管信函之前後八季以作為主要觀察樣本，因此我們亦選擇取用前後兩年作為主要觀察之樣本。

⁴⁹ 因我們認為，公司在收到第一封與非 GAAP 盈餘有關之監管信函，應即會做出適當之改善，且相對後續所收到與非 GAAP 盈餘有關之監管信函，監管信函所造成之影響應該會較大，因此我們選擇刪除同一公司第一封以外之監管信函之樣本。

第四章 實證結果與分析



第一節 敘述統計

表 3 是監管信函之數量統計，最左係實際參與迴歸之觀察值，第二欄為第一次收到與非 GAAP 盈餘衡量有關之監管信之觀察值，兩者之差額係可否計算可比較性。從表 3 與圖 3 中，我們可以發現 2005 年與 2016 年之觀察值數量較高，可能的原因係因在 2004 年時首次將監管信函上傳至公開平台供投資人閱讀，且因 2003 年 Reg. G 始實施，因此觀察值可能多集中於前段之時期。而至於 2016 年之部分，我們認為或許係因為 C&DIs 在 2016 年有重大之更新，對於非 GAAP 之盈餘衡量之揭露方法有更多的規範，美國證管會有更明確的方向來告知公司之非 GAAP 盈餘之揭露疑慮，因此美國證管會在 2016 年可能會大規模的針對公司揭露之非 GAAP 盈餘進行稽查程序進而出具監管信函。

(插入表 3)

(插入圖 3)

表 4 係以兩年為例之解釋變數及其與控制變數之相關係數表。表 5 為前後兩年實證模型之敘述統計表，我們將觀察值限定在有參與跑其迴歸模型之部分，包含平均數、標準差、第一四分位數、中位數以及第三四分位數。同時為避免極端值之影響，故我們使用溫賽化處理觀察值中的 1% 以前以及 99% 以後之極端值。

被解釋變數的部分，我們可以發現非 GAAP 盈餘衡量之可比較性(NG_COMP)中位數較 GAAP 盈餘衡量之可比較性(G_COMP)中位數高，而其標準差也較 GAAP 之標準差來得小。兩者觀察值的差係因為我們在處理 GAAP 可比較性時，從非

GAAP 可比較性之觀察職中選取，且因 GAAP 可比較性本身亦有遺漏值，因此會有些微的差距。解釋變數 (POST_2) 之部分，因為我們以收到監管信前兩年為 0、收到監管信後兩年為 1，因此平均數為 0.553 屬正常範圍內。



控制變數之部分，銷貨標準差 (STD_SALE) 之平均數為 0.037、中位數為 0.025、標準差為 0.041；營業活動現金流量標準差 (STD_OCF) 之平均數為 0.023、中位數為 0.018、標準差為 0.018，其兩者之波動幅度不算太大。銷貨成長率 (SALE_GRWTH) 之平均數為 0.123、中位數為 0.067、標準差為 0.400；營業活動現金流量 (OCF) 平均數為 0.080、中位數為 0.084、標準差為 0.088；淨損機率 (LOSSPROB) 部分的平均數及標準差皆為 0.296、中位數為 0.188，可以看得出大部分公司發生淨損的機率小於 50%。且因 BIG4 之第一、三四分位數及中位數皆為 1，代表大多數的公司是由四大會計師事務所所查核。

(插入表 4)

(插入表 5)



第二節 實證結果

如前段所述，我們將結果分成前後兩年之影響與前後四年之影響。而我們可以從表 6 中發現在前後兩年之研究中，POST 變數與 COMP 呈現顯著正相關，且為 1% 之顯著水準，整體模型的調整後 R 平方為 0.346。這證明了當公司收到與非 GAAP 之盈餘衡量相關之監管信函時，會使得公司之非 GAAP 之盈餘衡量之可比較性有所提升，說明美國證管會在此項對於非 GAAP 盈餘衡量之監管手段是有效果的，與美國證管會對於執行稽查程序及發佈監管信函的目標一致。

當收到監管信函後兩年之非 GAAP 盈餘衡量之可比較性較收到前兩年之可比較性高出 0.1。而於其控制變數中，我們可以發現營業活動現金流量之標準差以及淨損機率呈顯著負相關，而營業活動現金流量與市價帳面價值比為顯著正相關。這代表了當公司的營業活動現金流量越多且越穩定，對於非 GAAP 盈餘衡量之可比較性是有正向影響的，且當公司發生淨損機率較高時，會對該公司非 GAAP 盈餘衡量之可比較性有反向之影響。

表 6 中亦有包含觀察前後四年之迴歸結果。於前後四年之結果中也呈現顯著正相關，說明了當公司收到監管信函後四年之非 GAAP 盈餘衡量之可比較性會較收到前四年高出 0.106，顯著水準為 5%、整體迴歸式調整後 R 平方為 0.369。而控制變數中，與前後兩年之部分相當，惟負債比率、公司規模以及是否為四大查核為顯著。負債比率與呈顯著負相關，代表負債佔總資產越多，該公司之非 GAAP 盈餘衡量之可比較性就較差；公司規模呈顯著正相關，代表當公司規模越大時，非 GAAP 盈餘衡量之可比較性即越高。

(插入表 6)



綜合上述之討論，假說 1a 得到驗證，在其他條件不變下，收到與非 GAAP 盈餘有關之監管信函，會與公司揭露之非 GAAP 盈餘之可比較性呈現正向關係。

而在 GAAP 可比較性中，我們可以發現無論是前後兩年或者是前後四年，POST 皆呈現不顯著之結果，整體迴歸式之調整後 R 平方分別為 0.436 與 0.429，因此假說 1b 也得到了驗證，在其他條件不變下，收到與非 GAAP 衡量有關之監管信函，不會對 GAAP 可比較性有所影響⁵⁰。

⁵⁰ 在 GAAP 可比較性之樣本比非 GAAP 可比較性之樣本較少，原因係因為我們是從非 GAAP 盈餘中再篩選出 GAAP 可比較性之樣本，故 GAAP 可比較性之樣本會較少。



第三節 穩健性測試

除上述實證結果之外，我們另外再針對其實證結果做了穩健性測試，表 8 中我們使用群聚分析 (One Way Cluster by Firm) 測試本研究之迴歸式，其結果與上節之結果相同。

(插入表 7)

另外，我們為確定其效果不會因為我們所選取之年度而有所差異，表 8 我們將 POST 另外再定義為前後六年、前後八年以及前後十年。其結果與我們的實證結果一致。不論是前後六、八或十年，於非 GAAP 盈餘衡量之迴歸中，結果皆呈現顯著正相關，即代表當公司收到與非 GAAP 盈餘衡量有關之監管信函時，其非 GAAP 之盈餘衡量可比較性會有所增加；而在 GAAP 盈餘衡量之迴歸當中，結果亦與主要迴歸結果相同，皆呈現不顯著之狀態，代表當公司收到與非 GAAP 盈餘衡量有關之監管信函時，其 GAAP 盈餘衡量之可比較性不會有所影響。

(插入表 8)

最後，我們另外再選取 Audit Analytics 資料庫中與非 GAAP 盈餘及其相關之財務衡量無關之監管信函⁵¹，且與主要實證相同，將樣本期間定義在 2000 年至 2017 年，並且針對 8-K 文件之監管信函作為觀察值，不過因為 8-K 文件中通常詢問的議題與非 GAAP 盈餘較有關係，因此在此穩健性測試中觀察值可能與主要實證之觀察值有所差距。POST 亦定義在前後兩年及前後四年，被解釋變數同主要迴歸使用非 GAAP 盈餘之可比較性。如表 9 所述，我們發現不論是前後兩年或是前後四年之觀察值，皆呈現不顯著，此結果顯示了，當公司收到與非 GAAP 盈餘有關之


⁵¹ 且只針對與主要實證模型中相同公司的監管信函，以作比較。

監管信函時，並不會對其所揭露之非 GAAP 盈餘之可比較性有所影響，證明了我們的實證結果確實係因收到與非 GAAP 盈餘有關之監管信函而造成之影響。

(插入表 9)



第五章 結論




非 GAAP 盈餘與其相關之財務衡量在近幾年來使用程度大幅增加，對於美國證管會的立場來說，保護投資人使用此等財務資訊不被誤導係監管者的首要目標。美國證管會對非 GAAP 盈餘及其相關之財務衡量於 2003 年開始制定相關政策給予規範，本意即是希望投資大眾得以更安心的使用該等資訊。因此我們在本篇研究中測試了當公司收到與非 GAAP 盈餘衡量有關之監管信函，是否會對其所揭露的非 GAAP 盈餘之可比較性有所影響及改變。

根據 De Franco et al. (2011) 對於可比較性的定義，係指公司與公司之間是否得以兩兩比較之，而對於可比較性之衡量，我們亦採用了 De Franco et al. (2011) 之衡量方式。我們發現，當公司收到與非 GAAP 盈餘及其相關之財務衡量有關之監管信函時，會對公司所揭露之非 GAAP 盈餘衡量之可比較性有提升之效果，且因為我們亦測試了當公司收到該等監管信函時，是否會對其所揭露之 GAAP 盈餘衡量之可比較性是否有所改變，其結果為不顯著。因此也將非 GAAP 盈餘衡量有關之監管信函的影響限定在非 GAAP 盈餘衡量下。同時我們也利用了穩健性測試，測試本篇研究中的實證結果，其效果亦與主要結果一致。

已有許多研究支持非 GAAP 之盈餘衡量係可提供資訊價值，而可比較性，係屬資訊品質架構的其中一項。監管者在制定相關政策時之基本立意係希望投資大眾不被該等資訊所誤導，而本篇研究也證明了美國證管會對於非 GAAP 盈餘及其相關財務衡量之監管政策係屬有效果的。

然而，本篇研究亦有諸多限制，例如在計算可比較性時，因 De Franco et al.

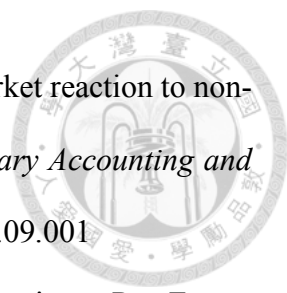



(2011) 對於其衡量定義，係需前 16 季之資訊，但因為非 GAAP 盈餘及其相關財務衡量非屬強制性揭露，因此，若遺漏值的情況十分明顯，且 16 季中，只要有一個為遺漏值，則可比較性就無法得出，因此觀察值之數量偏少。且因為在樣本期間當中，美國證管會持續的更新與非 GAAP 盈餘及其相關之財務衡量有關之規範，如 2010 年發布了 C&DIs，但於 2016 年及 2017 年皆有更新，然因為若將樣本分成各時期之樣本群，則觀察值之數量會偏少許多，因此我們無法得出各個時期，監管信函對於非 GAAP 盈餘衡量之可比較性之影響。再者，我們無法觀察出大公司與小公司之差別，若使用是否為 S&P500 作為大小公司之判斷標準，則兩者樣本群的觀察值數量差距十分龐大，因此無法擁有相同之比較基準。最後，因我們的樣本中無非為「收到與非 GAAP 盈餘有關監管信函之公司」，因此我們無法得知實證樣本以外之公司揭露非 GAAP 盈餘之情況如何。但儘管有這些研究上之限制，我們依然證明了美國證管會使用稽查與監管信函作為對非 GAAP 盈餘衡量之監管手段係有其必要性的，且其效果是為有效的。

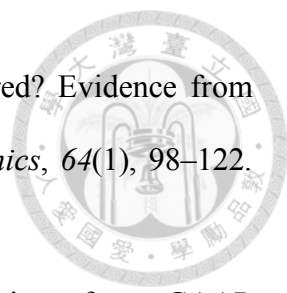
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圖 1、非 GAAP 有關之監管信函占全部監管信函之占比

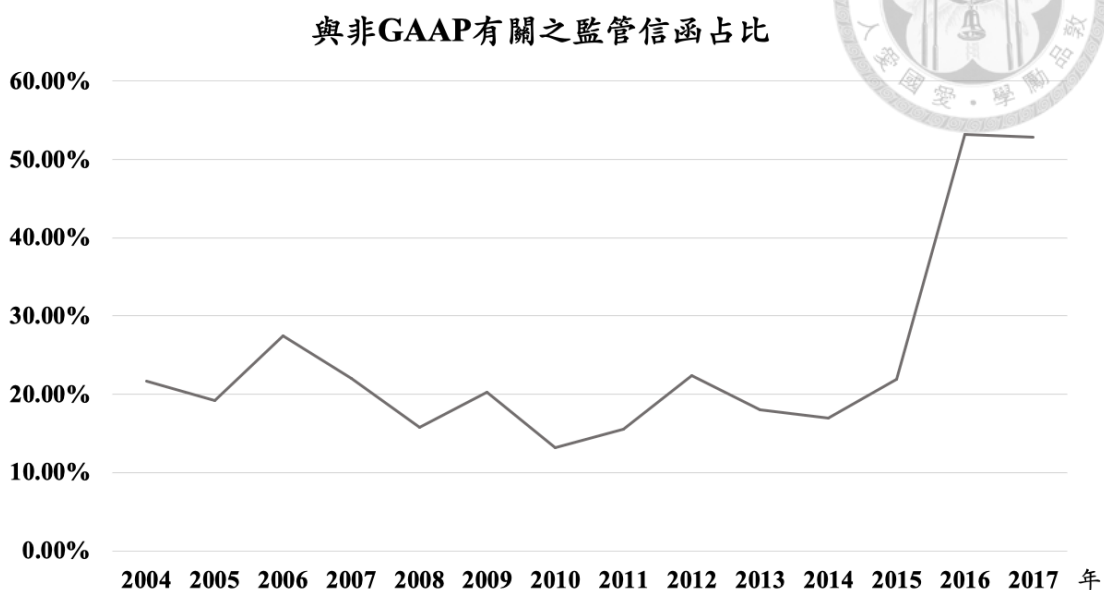


圖 2、非 GAAP 之盈餘衡量相關監管手段之時間軸

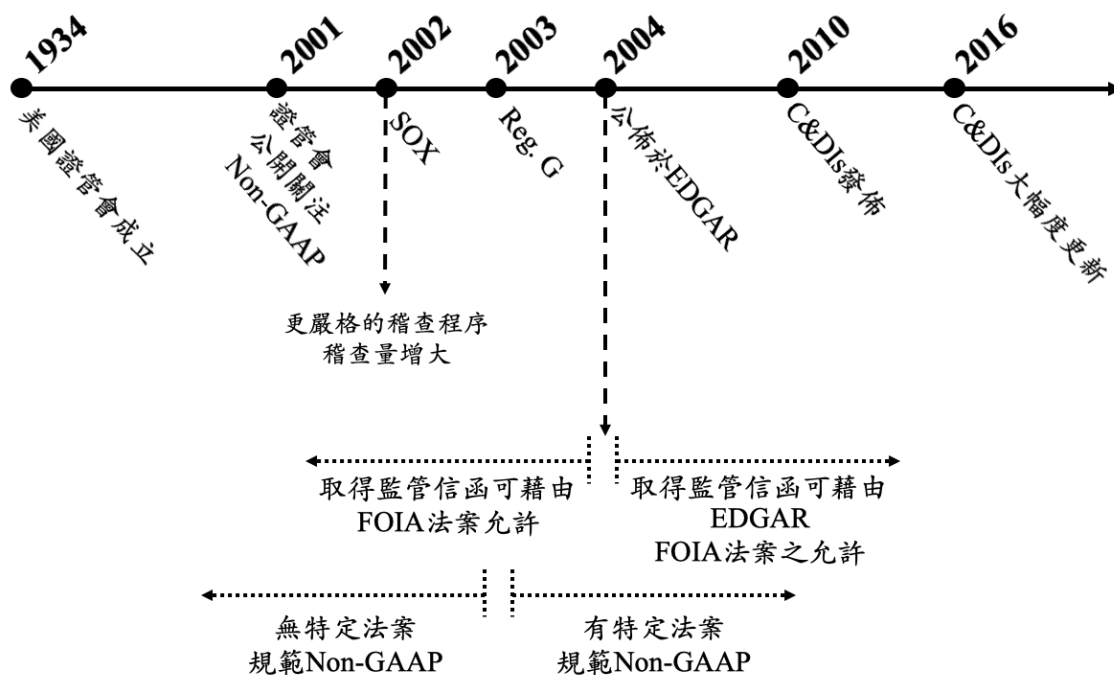


圖 3、實證之觀察值年份分佈圖

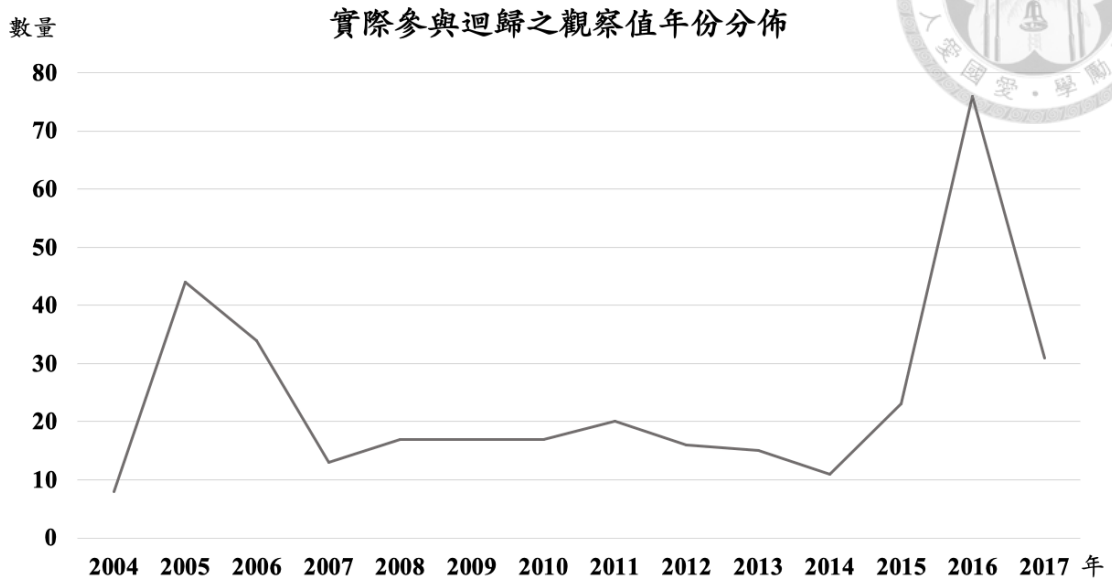


表 1、變數定義表

主要變數	
COMP	非 GAAP 盈餘衡量之可比較性或 GAAP 盈餘衡量之可比較性。
POST	是否收到與非 GAAP 盈餘衡量有關之監管信函。 前兩年（四年）為 1；後兩年（四年）為 0。
控制變數	
STD_SALE	過去 16 季，銷貨收入除季末總資產之標準差。
STD_OCF	過去 16 季，來自營業活動現金流量除以季末總資產之標準差。
SALE_GRWTH	當年度該公司之銷貨收入成長率。
OCF	來自營業活動現金流量，並平減於公司期末總資產。
MTB	當年度期末該公司權益之市價與帳面價值之比值。
ROA	資產報酬率，淨利除以期末總資產。
LEV	負債比率，期末總負債除以期末總資產。
SIZE	公司規模，公司期末總資產取自然對數。
BIG4	該公司是否經由四大會計師事務所查核。
LOSSPROB	過去 16 季，該公司發生淨損之機率。

表 2、樣本篩選表

樣本選取	觀察值
Audit Analytics 中有收過針對 8-K 盈餘宣告而發佈的監管信函之觀察值	598
扣除：無收過針對 8-K 揭露非 GAAP 盈餘衡量之監管信函	(60)
	538
扣除：非為該公司第一封之非 GAAP 盈餘衡量之監管信函	(196)
公司收受第一封與非 GAAP 盈餘衡量監管信且可計算可比較性之樣本	342
取該樣本之前後兩年	<u>1,130</u>
取該樣本之前後四年	<u>2,000</u>

表 3、監管信函統計數量表



年份	實際參與迴歸之 觀察值	僅保留		全部監管信函 發佈數量
		第一次收到與8K 且非GAAP有關	監管信函中 與非GAAP有關	
2004	8	28	24	111
2005	44	118	441	2305
2006	34	140	867	3156
2007	13	66	570	2593
2008	17	58	461	2929
2009	17	63	842	4160
2010	17	48	455	3458
2011	20	60	424	2731
2012	16	52	568	2537
2013	15	33	386	2151
2014	11	31	285	1687
2015	23	60	325	1487
2016	76	193	927	1742
2017	31	71	790	1494
總和	342	1021	7365	32541

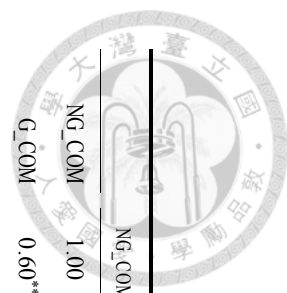


表 4、相關係數表 (以前後兩年為例)

	NG_COM	G_COM	POST_2	STD_SALE	STD_OCF	SALE_GRWTH	OCF	MTB	ROA	LEV	SIZE	BIG4	LOSSPROB
NG_COM	1.00												
G_COM	0.60***	1.00											
POST_2	0.07**	0.05	1.00										
STD_SALE	-0.12***	-0.07**	-0.05*	1.00									
STD_OCF	-0.19***	-0.09***	-0.04	0.43***	1.00								
SALE_GRWTH	0.01	0.04	0.03	-0.03	0.04	1.00							
OCF	0.40***	0.33***	0.03	-0.06*	-0.08**	-0.07**	1.00						
MTB	0.10***	0.05	0.03	-0.03	0.10***	0.03	0.13***	1.00					
ROA	0.32***	0.45***	-0.01	-0.03	-0.02	0.09***	0.47***	0.09***	1.00				
LEV	-0.09***	-0.08**	0.04	0.11***	0.05*	-0.05*	0.03	0.06**	0.02	1.00			
SIZE	0.19***	0.08**	0.04	-0.13***	-0.20***	-0.00	0.17***	0.01	0.20***	0.28***	1.00		
BIG4	0.02	0.02	-0.01	0.00	-0.03	-0.02	-0.02	-0.01	0.03	0.06*	0.25***	1.00	
LOSSPROB	-0.44***	-0.53***	-0.05	0.13***	0.18***	0.09***	-0.47***	-0.06**	-0.43***	-0.05	-0.37***	-0.10***	1.00

N=1019

* p < 0.1, ** p < 0.05, *** p < 0.01



表 5、敘述統計表 (以前後兩年為例)

	Observations	Mean	StdDev.	Q1	Median	Q3
NG_COM	1130	-1.082	1.342	-1.140	-0.715	-0.490
G_COM	1019	-2.591	2.669	-2.970	-1.710	-1.100
POST	1130	0.553	0.497	0.000	1.000	1.000
STD_SALE	1130	0.037	0.041	0.015	0.025	0.044
STD_OCF	1130	0.023	0.018	0.013	0.018	0.027
SALE_GRWTH	1130	0.123	0.400	-0.022	0.067	0.186
OCF	1130	0.080	0.088	0.049	0.084	0.122
MTB	1130	3.211	8.037	1.387	2.201	3.655
ROA	1130	-0.001	0.181	-0.014	0.031	0.062
LEV	1130	0.533	0.296	0.346	0.542	0.678
SIZE	1130	7.537	1.655	6.234	7.470	8.788
BIG4	1130	0.913	0.282	1.000	1.000	1.000
LOSSPROB	1130	0.296	0.296	0.062	0.188	0.500
N	1130					

表 6、實證結果

	NG_COMP		G_COMP	
	前後 2 年	前後 4 年	前後 2 年	前後 4 年
<i>POST</i>	0.100* (1.652)	0.106** (2.395)	0.147 (1.162)	0.155 (1.561)
STD_SALE	-0.060 (-0.070)	-1.291 (-1.350)	-2.885 (-1.266)	-4.259** (-2.120)
STD_OCF	-12.099*** (-2.798)	-8.971*** (-3.244)	-2.004 (-0.388)	0.944 (0.255)
SALE_GRWTH	-0.129 (-1.210)	-0.005 (-0.045)	0.529*** (2.694)	0.639*** (3.366)
OCF	2.345** (2.526)	2.788*** (3.608)	1.787 (1.157)	1.328 (1.248)
MTB	0.009** (2.364)	0.005 (1.536)	-0.003 (-0.274)	-0.004 (-0.489)
ROA	0.793 (1.261)	0.437 (1.389)	4.438*** (4.780)	3.296*** (6.091)
LEV	-0.103 (-0.487)	-0.312** (-2.538)	-0.545 (-1.510)	-1.019*** (-3.624)
SIZE	0.033 (1.262)	0.070*** (3.383)	-0.142** (-2.359)	-0.061 (-1.394)
BIG4	-0.071 (-0.658)	-0.237*** (-2.900)	-0.000 (-0.002)	-0.312* (-1.954)
LOSSPROB	-1.287*** (-6.629)	-1.256*** (-8.059)	-3.972*** (-10.301)	-4.182*** (-14.225)
Constant	-1.768*** (-5.762)	-0.874* (-1.951)	0.682 (1.030)	-0.050 (-0.062)
Industry FE	Y	Y	Y	Y
Observations	1,130	2,000	1,019	1,828
Adjust R ²	0.346	0.369	0.436	0.429

*** p<0.01, ** p<0.05, * p<0.1

表 7、額外測試 (ONE WAY CLUSTER)

	NG_COMP		G_COMP	
	前後 2 年	前後 4 年	前後 2 年	前後 4 年
<i>POST</i>	0.100* (1.667)	0.106** (2.129)	0.147 (1.162)	0.155 (1.328)
STD_SALE	-0.060 (-0.062)	-1.291 (-1.096)	-2.885 (-0.969)	-4.259* (-1.824)
STD_OCF	-12.099** (-2.359)	-8.971** (-2.269)	-2.004 (-0.309)	0.944 (0.177)
SALE_GRWTH	-0.129 (-1.205)	-0.005 (-0.045)	0.529** (2.299)	0.639*** (2.778)
OCF	2.345** (2.232)	2.788*** (2.954)	1.787 (1.054)	1.328 (1.003)
MTB	0.009** (2.105)	0.005 (1.354)	-0.003 (-0.241)	-0.004 (-0.419)
ROA	0.793 (1.350)	0.437 (1.449)	4.438*** (4.691)	3.296*** (7.213)
LEV	-0.103 (-0.603)	-0.312** (-2.294)	-0.545 (-1.257)	-1.019*** (-2.608)
SIZE	0.033 (1.074)	0.070** (2.307)	-0.142* (-1.712)	-0.061 (-0.982)
BIG4	-0.071 (-0.493)	-0.237* (-1.919)	-0.000 (-0.002)	-0.312 (-1.438)
LOSSPROB	-1.287*** (-5.178)	-1.256*** (-5.774)	-3.972*** (-7.798)	-4.182*** (-10.461)
Constant	-1.768*** (-4.530)	-0.874*** (-2.703)	0.682 (0.779)	-0.050 (-0.077)
Industry FE	Y	Y	Y	Y
Observations	1,130	2,000	1,019	1,828
Adjust R ²	0.346	0.369	0.436	0.429

*** p<0.01, ** p<0.05, * p<0.1

表 8、額外測試 (自變數之替換)

	NG_COMP			G_COMP		
	前後 6 年	前後 8 年	前後 10 年	前後 6 年	前後 8 年	前後 10 年
<i>POST</i>	0.094** (2.390)	0.097** (2.536)	0.094** (2.543)	0.093 (1.027)	0.086 (1.012)	0.097 (1.193)
STD_SALE	-2.481** (-2.118)	-2.219** (-2.070)	-2.004** (-1.969)	-4.303** (-2.192)	-4.499** (-2.422)	-5.184*** (-2.931)
STD_OCF	-7.152*** (-3.060)	-6.350*** (-2.941)	-7.414*** (-3.660)	0.334 (0.095)	0.008 (0.002)	0.041 (0.013)
SALE_GRWTH	0.063 (0.618)	0.090 (0.926)	0.117 (1.204)	0.590*** (4.038)	0.589*** (4.310)	0.532*** (4.015)
OCF	2.683*** (4.119)	2.955*** (5.016)	2.855*** (5.328)	1.172 (1.308)	2.155** (2.326)	2.129** (2.539)
MTB	0.005* (1.943)	0.004 (1.558)	0.005** (1.964)	-0.008 (-0.788)	-0.010 (-0.964)	-0.005 (-0.495)
ROA	0.334 (1.280)	0.359 (1.403)	0.408 (1.603)	2.856*** (6.012)	2.939*** (6.076)	2.912*** (6.201)
LEV	-0.506*** (-4.059)	-0.514*** (-4.532)	-0.528*** (-4.712)	-1.309*** (-4.675)	-1.188*** (-4.860)	-1.265*** (-5.318)
SIZE	0.094*** (4.754)	0.095*** (5.230)	0.094*** (5.543)	-0.008 (-0.205)	0.016 (0.438)	0.023 (0.691)
BIG4	-0.196*** (-2.638)	-0.218*** (-3.220)	-0.197*** (-2.936)	-0.379** (-2.345)	-0.450*** (-2.905)	-0.386*** (-2.580)
LOSSPROB	-1.231*** (-9.148)	-1.195*** (-9.826)	-1.185*** (-10.578)	-4.255*** (-16.518)	-3.993*** (-17.157)	-3.890*** (-17.722)
Constant	-0.916** (-2.036)	-0.938** (-2.091)	-0.931** (-2.090)	-0.158 (-0.196)	-0.490 (-0.645)	-0.587 (-0.791)
Industry FE	Y	Y	Y	Y	Y	Y
Observations	2,626	3,077	3,395	2,424	2,851	3,158
Adjust R ²	0.358	0.357	0.366	0.42	0.423	0.427

*** p<0.01, ** p<0.05, * p<0.1

表 9、收到與非 GAAP 盈餘無關之監管信函對非 GAAP 盈餘可比較性之影響

	NG_COMP	
	前後2年	前後4年
<i>POST</i>	-0.029	-0.049
	(-0.189)	(-0.243)
STD_SALE	5.462	1.710
	(1.053)	(0.592)
STD_OCF	12.483	7.164
	(0.924)	(0.830)
SALE_GRWTH	-0.319	0.013
	(-0.744)	(0.033)
OCF	5.478***	4.748***
	(3.844)	(4.518)
MTB	-0.035*	-0.025*
	(-1.937)	(-1.717)
ROA	2.404***	1.693***
	(3.275)	(4.033)
LEV	-0.456	-0.821
	(-0.810)	(-1.636)
SIZE	0.106	0.095
	(1.034)	(1.070)
BIG4	-0.066	-0.106
	(-0.211)	(-0.343)
LOSSPROB	-1.077**	-1.615***
	(-2.080)	(-2.989)
Constant	-1.734	-0.390
	(-1.554)	(-0.385)
Industry FE	YES	YES
Observations	261	467
Adj R ²	0.744	0.636

*** p<0.01, ** p<0.05, * p<0.1

附錄



本篇研究使用名詞相關之翻譯

英文原文	中文翻譯
Generally Accepted Accounting Principles, GAAP	一般公認會計原則
Cease and Desist	停止並終止
Center for Audit Quality, CAQ	審計品質中心
Comment Letters	監管信函
Commission's Rules of Practice	美國證管會實務守則
Compliance and Disclosure Interpretations, C&DIs	遵循與揭露之解釋函令
Division of Corporation Finance	公司財務部門
Division of Enforcement	強制執行部門
Filing Reviews	稽查程序
Financial Accounting Standards Board, FASB	財務會計準則委員會
Fraud risk factor	舞弊風險因子
Freedom of Information Act, FOIA	資訊自由法案
International Accounting Standards Board, IASB	國際會計準則理事會
International Financial Reporting Standards, IFRS	國際會計準則
International Organization of Securities Commissions, IOSCO	國際證券委員會
Management's Discussion and Analysis, MD&A	管理階層討論與分析
Non-GAAP Earnings	非一般公認會計原則盈餘
Pro Forma	擬制性盈餘
Prominence	顯眼程度
Public Company Accounting Reform and Investor Protection Act of 2002, SOX Act	沙賓法案
Registrants	註冊公司
Regulation G	G 法案
Regulation S-K	S-K 法案
Securities Exchange Act of 1934	證券交易法
United States Securities and Exchange Commission, SEC	美國證券管理委員會



可比較性計算之範例

$$Earnings_{it} = \alpha_i + \beta_i Return_{it} + \varepsilon_{it} \dots\dots (1)$$

$$E(Earnings)_{iit} = \hat{\alpha}_i + \hat{\beta}_i Return_{it} \dots\dots (2)$$

$$E(Earnings)_{ijt} = \hat{\alpha}_j + \hat{\beta}_j Return_{it} \dots\dots (3)$$

$$Comparability_{ijt} = -\frac{1}{16} \times \sum_{t-15}^t |E(Earnings_{iit}) - E(Earnings_{ijt})| \dots\dots (4)$$

首先我們以 2016 年為例，Amazon (GVKEY=064768) 作為 i 公司以及 Office DEPOT & OfficeMAX (GVKEY=014624) 作為 j 公司，兩者 SIC 碼皆為 59 (雜項零售)，且會計年度結束日皆在 12 月 31 日。

步驟一、利用 (1) 式，計算出兩間公司的 α 與 β ，以代表該各公司 2015 年的會計資訊系統。我們得出 $\hat{\alpha}_i$ 為 0.00048773、 $\hat{\beta}_i$ 為 0.00080821；以 j 公司來說， $\hat{\alpha}_j$ 為 0.0107037、 $\hat{\beta}_j$ 為 -0.00706682。

因此將上式整理如下：

$$E(Earnings)_{iit} = 0.00048773 + 0.00080821 Return_{it} \dots\dots (5)$$

$$E(Earnings)_{ijt} = 0.01070370 - 0.00706682 Return_{it} \dots\dots (6)$$

步驟二、將 Amazon 2013 年第一季至 2016 年第四季股票報酬率分別帶入 (2) 式中，計算 2013 年第一季至 2016 年第四季之預期盈餘。

步驟三、將 Amazon 2013 年第一季至 2016 年第四季股票報酬率分別帶入 (3) 式中，計算 2013 年第一季至 2016 年第四季之預期盈餘。

步驟四、將兩者每季之預期盈餘帶入 (4) 式中，即可得出兩者間的可比較性。如

下表所彙總。

我們將上述資料整理如下：



	i 公司		j 公司		相減後絕對值
	Return _{it}	E(Earnings) _{iit}	Return _{it}	E(Earnings) _{ijt}	
2013 季一	0.06226330	0.000538052	0.06226330	0.010263696	0.009725645
2013 季二	0.04202789	0.000521697	0.04202789	0.010406696	0.009884999
2013 季三	0.12585981	0.000589451	0.12585981	0.009814271	0.009224820
2013 季四	0.27555653	0.000710438	0.27555653	0.008756392	0.008045954
2014 季一	-0.15653610	0.000361216	-0.15653610	0.011809912	0.011448696
2014 季二	-0.03444170	0.000459894	-0.03444170	0.010947093	0.010487200
2014 季三	-0.00720490	0.000481907	-0.00720490	0.010754616	0.010272709
2014 季四	-0.03749530	0.000457426	-0.03749530	0.010968673	0.010511247
2015 季一	0.19896891	0.000648539	0.19896891	0.009297623	0.008649084
2015 季二	0.16659498	0.000622374	0.16659498	0.009526403	0.008904030
2015 季三	0.17922556	0.000632582	0.17922556	0.009437145	0.008804563
2015 季四	0.32038132	0.000746665	0.32038132	0.008439623	0.007692957
2016 季一	-0.12169140	0.000389378	-0.12169140	0.011563671	0.011174293
2016 季二	0.20547803	0.000653799	0.20547803	0.009251624	0.008597824
2016 季三	0.17004835	0.000625165	0.17004835	0.009501999	0.008876834
2016 季四	-0.10442970	0.000403329	-0.10442970	0.011441686	0.011038357
平均取負					<u>-0.009583701</u>

不過以上係為方便了解計算過程，若依照 De Franco et al. (2011) 之定義，要計算出完整的可比較性，我們還需將其他 SIC59 公司之可比較性的值算出，並且排序，再取其中位數或是其前四大之值的平均數。



非 GAAP 盈餘揭露方式之範例

Uber 計算及揭露 Non-GAAP 盈餘之方式

Mar 31 '19	
Revenue	\$3,099
Excess Driver incentives	(303)
Driver referrals	(35)
Adjusted Net Revenue	\$2,761

(詳細資訊取自：

https://s23.q4cdn.com/407969754/files/doc_financials/2019/Q1/Q1-2019-supplemental-slides.pdf)

Google 計算及揭露 Non-GAAP 盈餘之方式

	Three Months Ended December 31, 2018 <i>YoY (using Q4'17's FX rates)</i>	Three Months Ended December 31, 2018 <i>QoQ (using Q3'18's FX rates)</i>
EMEA revenues (GAAP)	\$ 12,350	\$ 12,350
Exclude foreign exchange effect on Q4'18 revenues using Q4'17 rates	367	N/A
Exclude foreign exchange effect on Q4'18 revenues using Q3'18 rates	N/A	175
Exclude hedging effect recognized in Q4'18	(99)	(99)
EMEA constant currency revenues (non-GAAP)	\$ 12,618	\$ 12,426

(詳細資訊取自：

https://abc.xyz/investor/static/pdf/2019Q1_alphabet_earnings_release.pdf)

監管信函之範例

與非 GAAP 衡量顯眼程度議題之實例

公司：International Paper Company.

公司原所提交之文件及其提交之日期：8-K，2016 年 7 月 28 日

監管信函發佈之日期：2016 年 9 月 22 日

全文網址：<https://www.sec.gov/Archives/edgar/data/51434/000000000016094091/filename1.pdf>

Dear Ms. Roberts:

We have limited our review of your filing to those issues we have addressed in our comments. In some of our comments, we may ask you to provide us with information so we may better understand your disclosure.

Please respond to these comments within ten business days by providing the requested information or advise us as soon as possible when you will respond. If you do not believe our comments apply to your facts and circumstances, please tell us why in your response.

After reviewing your response to these comments, we may have additional comments.

Form 8-K Filed July 28, 2016

1. We note that you describe second quarter 2016 earnings as “strong overall results” in the headline caption and this appears to refer solely to your non-GAAP results. In future earnings releases, please include an equally prominent descriptive characterization of the comparable GAAP results. See Question 102.10 of the updated Non-GAAP Compliance and Disclosure Interpretations issued on May 17, 2016. In addition, consider whether the term “overall” is appropriate to describe results that exclude significant expenses.



刪除整份非 GAAP 盈餘之損益報表及現金流量相關衡量之實例

公司：Hertz Global Holdings Inc.

公司原所提交之文件及其提交之日期：8-K，2016 年 8 月 9 日

監管信函發佈之日期：2016 年 9 月 28 日

全文網址：<https://www.sec.gov/Archives/edgar/data/47129/000000000016095030/filename1.pdf>



Dear Mr. Kennedy:

We have limited our review of your filing to those issues we have addressed in our comments. In some of our comments, we may ask you to provide us with information so we may better understand your disclosure.

Please respond to these comments within ten business days by providing the requested information or advise us as soon as possible when you will respond. If you do not believe our comments apply to your facts and circumstances, please tell us why in your response.

After reviewing your response to these comments, we may have additional comments.

1. You present a full non-GAAP income statement when reconciling non-GAAP measures to the most directly comparable GAAP measures. Please reconcile without presenting a full non-GAAP income statement in your next earnings release. See Question 102.10 of the updated Non-GAAP Compliance and Disclosure Interpretations issued on May 17, 2016.
2. Your computation of free cash flow differs from the typical calculation (cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures). See Question 102.07 of the Non-GAAP Compliance and Disclosure Interpretations and revise the title of this non-GAAP measure.

使用非 GAAP 衡量相關名稱之實例

公司：Air Products and Chemicals, Inc.

公司原所提交之文件及其提交之日期：8-K，2016 年 1 月 29 日

監管信函發佈之日期：2016 年 2 月 26 日

全文網址：<https://www.sec.gov/Archives/edgar/data/2969/000000000016066442/filename1.pdf>



Dear Mr. Crocco:

We have limited our review of your filing to the financial statements and related disclosures and have the following comments. In some of our comments, we may ask you to provide us with information so we may better understand your disclosure.

Please respond to these comments within ten business days by providing the requested information or advise us as soon as possible when you will respond. If you do not believe our comments apply to your facts and circumstances, please tell us why in your response.

After reviewing your response to these comments, we may have additional comments.

Form 8-K Filed on January 29, 2016

1. In your earnings release, we note you provide disclosures that you identify as “EPS”, “Net Income”, “Operating Income”, and “EPS Guidance” that actually relate to non- GAAP financial measures. Please revise future disclosures related to non-GAAP financial measures to not use GAAP terminology when you refer to non-GAAP financial measures.

與稅後淨額表達相關非 GAAP 盈餘之實例

公司：Apache Corporation

公司原所提交之文件及其提交之日期：8-K，2016 年 8 月 4 日

監管信函發佈之日期：2016 年 9 月 22 日

全文網址：<https://www.sec.gov/Archives/edgar/data/6769/000000000016094092/filename1.pdf>



Dear Mr. Riney:

We have limited our review of your filing to those issues we have addressed in our comments. In some of our comments, we may ask you to provide us with information so we may better understand your disclosure.

Please respond to these comments within ten business days by providing the requested information or advise us as soon as possible when you will respond. If you do not believe our comments apply to your facts and circumstances, please tell us why in your response.

After reviewing your response to these comments, we may have additional comments.

Form 8-K Filed August 4, 2016

1. We note that the adjustments to arrive at adjusted earnings are presented “net of tax.” Please present the income tax effects of your non-GAAP adjustments as a separate adjustment and explain how you calculated the income tax effects related to these adjustments in your next earnings release. See Question 102.11 of the updated Non- GAAP Compliance and Disclosure Interpretations issued on May 17, 2016.

與非 GAAP 衡量相關調節之實例

公司：Abbott Laboratories

公司原所提交之文件及其提交之日期：8-K，2017 年 1 月 25 日

監管信函發佈之日期：2017 年 3 月 29 日

全文網址：<https://www.sec.gov/Archives/edgar/data/1800/000000000017016024/filename1.pdf>



Dear Mr. Yoor:

We have limited our review of your filing to the issue we have addressed in our comment. In our comment, we ask you to provide us with information so we may better understand your disclosure.

Please respond to the comment within ten business days by providing the requested information or advise us as soon as possible when you will respond. If you do not believe our comment applies to your facts and circumstances, please tell us why in your response.

After reviewing your response to the comment, we may have additional comments.

Form 8-K filed January 25, 2017 Exhibit 99.1

1. Please refer to the non-GAAP reconciliations of financial information from continuing operations on pages 14 and 15. For each reconciliation and for each line item (other than intangible amortization), provide us a schedule of the "specified items" showing the amount and description of each specified item.

沙賓法案相關條文

401(b)之條文



(b) COMMISSION RULES ON PRO FORMA FIGURES.

Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.


408 之條文

(a) REGULAR AND SYSTEMATIC REVIEW.

The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 (including reports filed on Form 10-K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) REVIEW CRITERIA.

For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors,

- 
- (1) issuers that have issued material restatements of financial results;
 - (2) issuers that experience significant volatility in their stock price as compared to other issuers;
 - (3) issuers with the largest market capitalization;
 - (4) emerging companies with disparities in price to earning ratios;
 - (5) issuers whose operations significantly affect any material sector of the economy;
 - (6) any other factors that the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.

In no event shall an issuer required to file reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 be reviewed under this section less frequently than once every 3 years.



Reg. G Rule 100 之條文

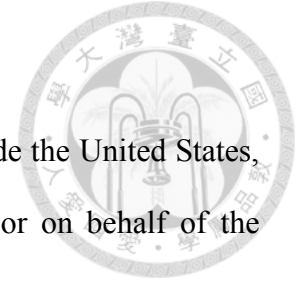
(a) Whenever a registrant, or person acting on its behalf, publicly discloses material information that includes a non-GAAP financial measure, the registrant must accompany that non-GAAP financial measure with:

- (1) A presentation of the most directly comparable financial measure calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP); and
- (2) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (a)(1) of this section.

(b) A registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading.

(c) This section shall not apply to a disclosure of a non-GAAP financial measure that is made by or on behalf of a registrant that is a foreign private issuer if the following conditions are satisfied:

- (1) The securities of the registrant are listed or quoted on a securities exchange or inter-dealer quotation system outside the United States;
- (2) The non-GAAP financial measure is not derived from or based on a measure calculated and presented in accordance with generally accepted accounting principles



in the United States; and

(3) The disclosure is made by or on behalf of the registrant outside the United States, or is included in a written communication that is released by or on behalf of the registrant outside the United States.

(d) This section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to § 230.425 of this chapter, § 240.14a-12 or § 240.14d-2(b)(2) of this chapter or § 229.1015 of this chapter.

Notes to § 244.100:

1. If a non-GAAP financial measure is made public orally, telephonically, by Web cast, by broadcast, or by similar means, the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section will be satisfied if:

(i) The required information in those paragraphs is provided on the registrant's Web site at the time the non-GAAP financial measure is made public; and

(ii) The location of the web site is made public in the same presentation in which the non-GAAP financial measure is made public.

2. The provisions of paragraph (c) of this section shall apply notwithstanding the existence of one or more of the following circumstances:

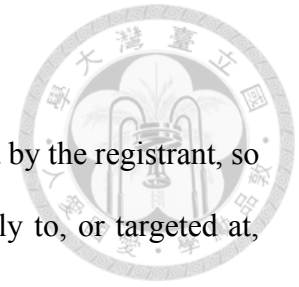
(i) A written communication is released in the United States as well as outside the United States, so long as the communication is released in the United States contemporaneously with or after the release outside the United States and is not otherwise targeted at persons located in the United States;

(ii) Foreign journalists, U.S. journalists or other third parties have access to the

information;

(iii) The information appears on one or more web sites maintained by the registrant, so long as the web sites, taken together, are not available exclusively to, or targeted at, persons located in the United States; or

(iv) Following the disclosure or release of the information outside the United States, the information is included in a submission by the registrant to the Commission made under cover of a Form 6-K.





Reg. S-K (10)之條文

(a)Application of Regulation S-K.

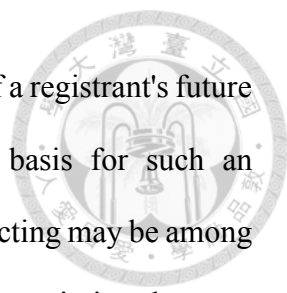
This part (together with the General Rules and Regulations under the Securities Act of 1933, 15 U.S.C. 77aet seq., as amended (Securities Act), and the Securities Exchange Act of 1934, 15 U.S.C. 78aet seq., as amended (Exchange Act) (parts 230 and 240 of this chapter), the Interpretative Releases under these Acts (parts 231 and 241 of this chapter) and the forms under these Acts (parts 239 and 249 of this chapter)) states the requirements applicable to the content of the non-financial statement portions of:

- (1) Registration statements under the Securities Act (part 239 of this chapter) to the extent provided in the forms to be used for registration under such Act; and
- (2) Registration statements under section 12 (subpart C of part 249 of this chapter), annual or other reports under sections 13 and 15(d) (subparts D and E of part 249 of this chapter), going-private transaction statements under section 13 (part 240 of this chapter), tender offer statements under sections 13 and 14 (part 240 of this chapter), annual reports to security holders and proxy and information statements under section 14 (part 240 of this chapter), and any other documents required to be filed under the Exchange Act, to the extent provided in the forms and rules under that Act.

(b)Commission policy on projections.

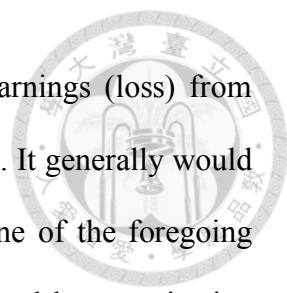
The Commission encourages the use in documents specified in Rule 175 under the Securities Act (§ 230.175 of this chapter) and Rule 3b-6 under the Exchange Act (§ 240.3b-6 of this chapter) of management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format. The guidelines set forth herein represent the Commission's views on important factors to be considered in formulating and disclosing such projections.

- (1)Basis for projections. The Commission believes that management must have the



option to present in Commission filings its good faith assessment of a registrant's future performance. Management, however, must have a reasonable basis for such an assessment. Although a history of operations or experience in projecting may be among the factors providing a basis for management's assessment, the Commission does not believe that a registrant always must have had such a history or experience in order to formulate projections with a reasonable basis. An outside review of management's projections may furnish additional support for having a reasonable basis for a projection. If management decides to include a report of such a review in a Commission filing, there also should be disclosure of the qualifications of the reviewer, the extent of the review, the relationship between the reviewer and the registrant, and other material factors concerning the process by which any outside review was sought or obtained. Moreover, in the case of a registration statement under the Securities Act, the reviewer would be deemed an expert and an appropriate consent must be filed with the registration statement.

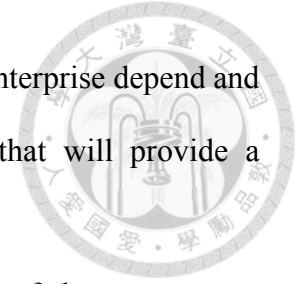
(2) Format for projections. In determining the appropriate format for projections included in Commission filings, consideration must be given to, among other things, the financial items to be projected, the period to be covered, and the manner of presentation to be used. Although traditionally projections have been given for three financial items generally considered to be of primary importance to investors (revenues, net income (loss) and earnings (loss) per share), projection information need not necessarily be limited to these three items. However, management should take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items. Revenues, net income (loss) and earnings (loss) per share usually are presented together in order to avoid any misleading inferences that may arise when the individual items reflect contradictory trends. There



may be instances, however, when it is appropriate to present earnings (loss) from continuing operations in addition to or in lieu of net income (loss). It generally would be misleading to present sales or revenue projections without one of the foregoing measures of income. The period that appropriately may be covered by a projection depends to a large extent on the particular circumstances of the company involved. For certain companies in certain industries, a projection covering a two or three year period may be entirely reasonable. Other companies may not have a reasonable basis for projections beyond the current year. Accordingly, management should select the period most appropriate in the circumstances. In addition, management, in making a projection, should disclose what, in its opinion, is the most probable specific amount or the most reasonable range for each financial item projected based on the selected assumptions. Ranges, however, should not be so wide as to make the disclosures meaningless. Moreover, several projections based on varying assumptions may be judged by management to be more meaningful than a single number or range and would be permitted.

(3)Investor understanding.


- (i) When management chooses to include its projections in a Commission filing, the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections. In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the Commission believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. The Commission also believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are



the key factors upon which the financial results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection.

- (ii) Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results. An important benefit may arise from the systematic analysis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-sensitive areas in a business operation.
- (iii) With respect to previously issued projections, registrants are reminded of their responsibility to make full and prompt disclosure of material facts, both favorable and unfavorable, regarding their financial condition. This responsibility may extend to situations where management knows or has reason to know that its previously disclosed projections no longer have a reasonable basis.
- (iv) Since a registrant's ability to make projections with relative confidence may vary with all the facts and circumstances, the responsibility for determining whether to discontinue or to resume making projections is best left to management. However, the Commission encourages registrants not to discontinue or to resume projections in Commission filings without a reasonable basis.

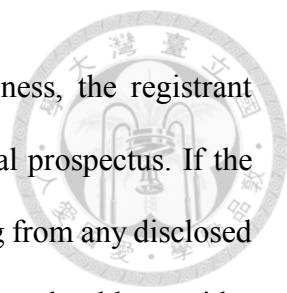
(c) Commission policy on security ratings.



In view of the importance of security ratings (ratings) to investors and the marketplace, the Commission permits registrants to disclose, on a voluntary basis, ratings assigned by rating organizations to classes of debt securities, convertible debt securities and preferred stock in registration statements and periodic reports. Set forth herein are the Commission's views on important matters to be considered in disclosing security ratings.

(1) Securities Act filings.

- (i) If a registrant includes in a registration statement filed under the Securities Act any rating(s) assigned to a class of securities, it should consider including:
 - (A) Any other rating intended for public dissemination assigned to such class by a nationally recognized statistical rating organization (NRSRO) (additional NRSRO rating) that is available on the date of the initial filing of the document and that is materially different from any rating disclosed; and
 - (B) the name of each rating organization whose rating is disclosed; each such rating organization's definition or description of the category in which it rated the class of securities; the relative rank of each rating within the assigning rating organization's overall classification system; and a statement informing investors that a security rating is not a recommendation to buy, sell or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating. The registrant also should include the written consent of any rating organization that is not a NRSRO whose rating is included. With respect to the written consent of any NRSRO whose rating is included, see Rule 436(g) under the Securities Act (§ 230.436(g) of this chapter).
- (ii) If a change in a rating already included is available subsequent to the filing



of the registration statement, but prior to its effectiveness, the registrant should consider including such rating change in the final prospectus. If the rating change is material or if a materially different rating from any disclosed becomes available during this period, the registrant should consider amending the registration statement to include the rating change or additional rating and recirculating the preliminary prospectus.

- (iii) If a materially different additional NRSRO rating or a material change in a rating already included becomes available during any period in which offers or sales are being made, the registrant should consider disclosing such additional rating or rating change by means of post-effective amendment or sticker to the prospectus pursuant to Rule 424(b) under the Securities Act (§ 230.424(b) of this chapter), unless, in the case of a registration statement on Form S-3 (§ 239.13 of this chapter), it has been disclosed in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to the termination of the offering.

(2) Exchange Act filings.

- (i) If a registrant includes in a registration statement or periodic report filed under the Exchange Act any rating(s) assigned to a class of securities, it should consider including the information specified in paragraphs (c)(1)(i)(A) and (B) of this section.
- (ii) If there is a material change in the rating(s) assigned by any NRSRO(s) to any outstanding class(es) of securities of a registrant subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act, the registrant should consider filing a report on Form 8-K (§ 249.308 of this chapter) or other appropriate report under the Exchange Act disclosing such rating



change.

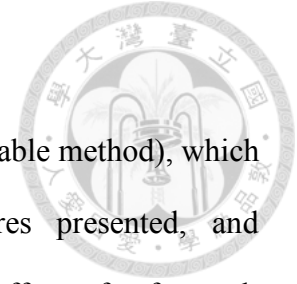
(d) Incorporation by Reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registrant or issuer is expressly required to incorporate a document or documents by reference (or for purposes of Item 1100(c) of Regulation AB (§ 229.1100(c)) with respect to an asset-backed issuer, as that term is defined in Item 1101 of Regulation AB (§ 229.1101)), reference may not be made to any document which incorporates another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

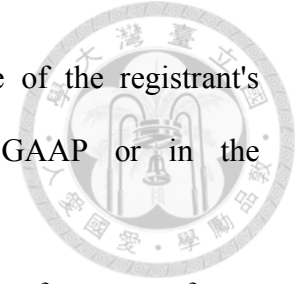
- (1) Documents contained in registration statements, which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; or
- (2) Documents that the registrant specifically identifies by physical location by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

(e) Use of non-GAAP financial measures in Commission filings.

- (1) Whenever one or more non-GAAP financial measures are included in a filing with the Commission:
 - (i) The registrant must include the following in the filing:
 - (A) A presentation, with equal or greater prominence, of the most directly comparable financial measure or measures calculated and presented in accordance



- with Generally Accepted Accounting Principles (GAAP);
- (B) A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP identified in paragraph (e)(1)(i)(A) of this section;
- (C) A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and
- (D) To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not disclosed pursuant to paragraph (e)(1)(i)(C) of this section; and
- (ii) A registrant must not:
- (A) Exclude charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation, and amortization (EBITDA);
 - (B) Adjust a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years;



(C) Present non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;

(D) Present non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X (17 CFR 210.11-01 through 210.11-03); or

(E) Use titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures; and

(iii) If the filing is not an annual report on Form 10-K or Form 20-F (17 CFR 249.220f), a registrant need not include the information required by paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section if that information was included in its most recent annual report on Form 10-K or Form 20-F or a more recent filing, provided that the required information is updated to the extent necessary to meet the requirements of paragraphs (e)(1)(i)(C) and (e)(1)(i)(D) of this section at the time of the registrant's current filing.

(2) For purposes of this paragraph (e), a non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

- (i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of comprehensive income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or
- (ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated



and presented.

(3) For purposes of this paragraph (e), GAAP refers to generally accepted accounting principles in the United States, except that:

(i) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(ii) In the case of foreign private issuers that include a non-GAAP financial measure derived from or based on a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of this paragraph (e) to the disclosure of that measure.

(4) For purposes of this paragraph (e), non-GAAP financial measures exclude:

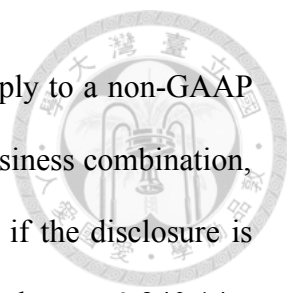
(i) Operating and other statistical measures; and

(ii) Ratios or statistical measures calculated using exclusively one or both of:

(A) Financial measures calculated in accordance with GAAP; and

(B) Operating measures or other measures that are not non-GAAP financial measures.

(5) For purposes of this paragraph (e), non-GAAP financial measures exclude financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. However, the financial measure should be presented outside of the financial statements unless the financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements.



(6) The requirements of paragraph (e) of this section shall not apply to a non-GAAP financial measure included in disclosure relating to a proposed business combination, the entity resulting therefrom or an entity that is a party thereto, if the disclosure is contained in a communication that is subject to § 230.425 of this chapter, § 240.14a-12 or § 240.14d-2(b)(2) of this chapter or § 229.1015 of this chapter.

(7) The requirements of paragraph (e) of this section shall not apply to investment companies registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

Note to paragraph (E):

A non-GAAP financial measure that would otherwise be prohibited by paragraph (e)(1)(ii) of this section is permitted in a filing of a foreign private issuer if:

1. The non-GAAP financial measure relates to the GAAP used in the registrant's primary financial statements included in its filing with the Commission;
 2. The non-GAAP financial measure is required or expressly permitted by the standard-setter that is responsible for establishing the GAAP used in such financial statements;
- and
3. The non-GAAP financial measure is included in the annual report prepared by the registrant for use in the jurisdiction in which it is domiciled, incorporated or organized or for distribution to its security holders.

(f)Smaller reporting companies.

The requirements of this part apply to smaller reporting companies. A smaller reporting company may comply with either the requirements applicable to smaller reporting companies or the requirements applicable to other companies for each item, unless the requirements for smaller reporting companies specify that smaller reporting companies must comply with the smaller reporting company requirements. The following items



of this part set forth requirements for smaller reporting companies that are different from requirements applicable to other companies:

Index of Scaled Disclosure Available to Smaller Reporting Companies

(1) Definition of smaller reporting company. As used in this part, the term smaller reporting company means an issuer that is not an investment company, an asset-backed issuer (as defined in § 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that:

- (i) Had a public float of less than \$250 million; or
- (ii) Had annual revenues of less than \$100 million and either:
 - (A) No public float; or
 - (B) A public float of less than \$700 million.

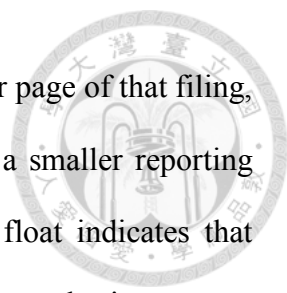
(2) Determination. Whether an issuer is a smaller reporting company is determined on an annual basis.

(i) For issuers that are required to file reports under section 13(a) or 15(d) of the Exchange Act:

(A) Public float is measured as of the last business day of the issuer's most recently completed second fiscal quarter and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates by the price at which the common equity was last sold, or the average of the bid and asked prices of common equity, in the principal market for the common equity;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) An issuer must reflect the determination of whether it came within the definition of smaller reporting company in its quarterly report on Form 10-Q for



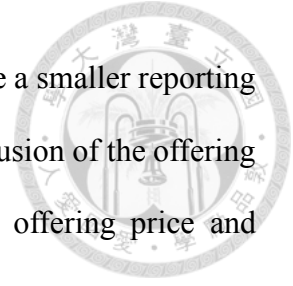
the first fiscal quarter of the next year, indicating on the cover page of that filing, and in subsequent filings for that fiscal year, whether it is a smaller reporting company, except that, if a determination based on public float indicates that the issuer is newly eligible to be a smaller reporting company, the issuer may choose to reflect this determination beginning with its first quarterly report on Form 10-Q following the determination, rather than waiting until the first fiscal quarter of the next year.

(ii) For determinations based on an initial registration statement under the Securities Act or Exchange Act for shares of its common equity:

(A) Public float is measured as of a date within 30 days of the date of the filing of the registration statement and computed by multiplying the aggregate worldwide number of shares of its voting and non-voting common equity held by non-affiliates before the registration plus, in the case of a Securities Act registration statement, the number of shares of its voting and non-voting common equity included in the registration statement by the estimated public offering price of the shares;

(B) Annual revenues are as of the most recently completed fiscal year for which audited financial statements are available; and

(C) The issuer must reflect the determination of whether it came within the definition of smaller reporting company in the registration statement and must appropriately indicate on the cover page of the filing, and subsequent filings for the fiscal year in which the filing is made, whether it is a smaller reporting company. The issuer must re-determine its status at the end of its second fiscal quarter and then reflect any change in status as provided in paragraph (f)(2)(i)(C) of this section. In the case of a determination based on an initial Securities Act



registration statement, an issuer that was not determined to be a smaller reporting company has the option to re-determine its status at the conclusion of the offering covered by the registration statement based on the actual offering price and number of shares sold.

(iii) Once an issuer determines that it does not qualify for smaller reporting company status because it exceeded one or more of the current thresholds, it will remain unqualified unless when making its annual determination either:

- (A) It determines that its public float was less than \$200 million; or
- (B) It determines that its public float and its annual revenues meet the requirements for subsequent qualification included in the following chart:

Prior annual revenues	Prior public float	
	None or less than \$700 million	\$700 million or more
Less than \$100 million	Neither threshold exceeded	Public float—Less than \$560 million; and Revenues—Less than \$100 million.
\$100 million or more	Public float—None or less than \$700 million; and Revenues—Less than \$80 million	Public float—Less than \$560 million; and Revenues—Less than \$80 million.

C&DIs 之條文



Section 100. General

Question 100.01

Question: Can certain adjustments, although not explicitly prohibited, result in a non-GAAP measure that is misleading?

Answer: Yes. Certain adjustments may violate Rule 100(b) of Regulation G because they cause the presentation of the non-GAAP measure to be misleading. For example, presenting a performance measure that excludes normal, recurring, cash operating expenses necessary to operate a registrant's business could be misleading. [May 17, 2016]

Question 100.02

Question: Can a non-GAAP measure be misleading if it is presented inconsistently between periods?

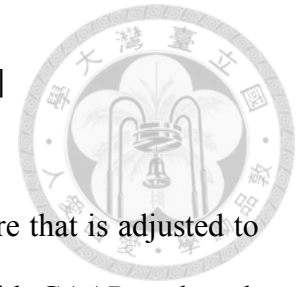
Answer: Yes. For example, a non-GAAP measure that adjusts a particular charge or gain in the current period and for which other, similar charges or gains were not also adjusted in prior periods could violate Rule 100(b) of Regulation G unless the change between periods is disclosed and the reasons for it explained. In addition, depending on the significance of the change, it may be necessary to recast prior measures to conform to the current presentation and place the disclosure in the appropriate context. [May 17, 2016]

Question 100.03

Question: Can a non-GAAP measure be misleading if the measure excludes charges, but does not exclude any gains?

Answer: Yes. For example, a non-GAAP measure that is adjusted only for non-recurring charges when there were non-recurring gains that occurred during the same

period could violate Rule 100(b) of Regulation G. [May 17, 2016]



Question 100.04

Question: A registrant presents a non-GAAP performance measure that is adjusted to accelerate revenue recognized ratably over time in accordance with GAAP as though it earned revenue when customers are billed. Can this measure be presented in documents filed or furnished with the Commission or provided elsewhere, such as on company websites?

Answer: No. Non-GAAP measures that substitute individually tailored revenue recognition and measurement methods for those of GAAP could violate Rule 100(b) of Regulation G. Other measures that use individually tailored recognition and measurement methods for financial statement line items other than revenue may also violate Rule 100(b) of Regulation G. [May 17, 2016]

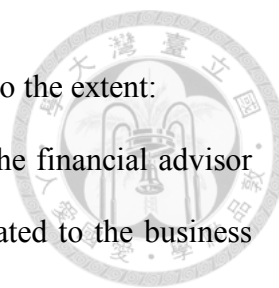
Section 101. Business Combination Transactions

Question 101.01

Question: Are financial measures included in forecasts provided to a financial advisor and used in connection with a business combination transaction non-GAAP financial measures?

Answer: No, if the conditions described below are met.

Item 10(e)(5) of Regulation S-K and Rule 101(a)(3) of Regulation G provide that a non-GAAP financial measure does not include financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant. Accordingly, financial measures provided to a financial advisor would be excluded from the definition of non-GAAP financial measures, and therefore not



subject to Item 10(e) of Regulation S-K and Regulation G, if and to the extent:

- the financial measures are included in forecasts provided to the financial advisor for the purpose of rendering an opinion that is materially related to the business combination transaction; and
- the forecasts are being disclosed in order to comply with Item 1015 of Regulation M-A or requirements under state or foreign law, including case law, regarding disclosure of the financial advisor's analyses or substantive work. [Oct. 17, 2017]

Question 101.02

Question: Can the registrant rely on the Answer to Question 101.01 if the same forecasts provided to its financial advisor are also provided to its board of directors or board committee?

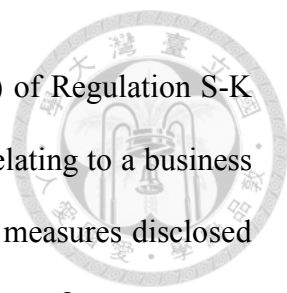
Answer: Yes. [April 4, 2018]

Question 101.03

Question: A registrant provides forecasts to bidders in a business combination transaction. To avoid anti-fraud concerns under the federal securities laws or ensure that the other disclosures in the document are not misleading, it determines that such forecasts should be disclosed. Are the financial measures contained in forecasts disclosed for this purpose considered non-GAAP financial measures?

Answer: If a registrant determines that forecasts exchanged between the parties in a business combination transaction are material and that disclosure of such forecasts is required to comply with the anti-fraud and other liability provisions of the federal securities laws, the financial measures included in such forecasts would be excluded from the definition of non-GAAP financial measures and therefore not subject to Item 10(e) of Regulation S-K and Regulation G. [April 4, 2018]

Question 101.04



Question: Does the exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures disclosed in communications relating to a business combination transaction extend to the same non-GAAP financial measures disclosed in registration statements, proxy statements and tender offer statements?

Answer: No. There is an exemption from Regulation G and Item 10(e) of Regulation S-K for non-GAAP financial measures disclosed in communications subject to Securities Act Rule 425 and Exchange Act Rules 14a-12 and 14d-2(b)(2); it is also intended to apply to communications subject to Exchange Act Rule 14d-9(a)(2). This exemption does not extend beyond such communications. Consequently, if the same non-GAAP financial measure that was included in a communication filed under one of those rules is also disclosed in a Securities Act registration statement, proxy statement, or tender offer statement, this exemption from Regulation G and Item 10(e) of Regulation S-K would not be available for that non-GAAP financial measure. [Oct. 17, 2017]

Question 101.05

Question: If reconciliation of a non-GAAP financial measure is required and the most directly comparable measure is a “pro forma” measure prepared and presented in accordance with Article 11 of Regulation S-X, may companies use that measure for reconciliation purposes, in lieu of a GAAP financial measure?

Answer: Yes. [Jan. 11, 2010]

Section 102. Item 10(e) of Regulation S-K

Question 102.01

Question: What measure was contemplated by "funds from operations" in footnote 50 to Exchange Act Release No. 47226, Conditions for Use of Non-GAAP Financial

Measures, which indicates that companies may use "funds from operations per share" in earnings releases and materials that are filed or furnished to the Commission, subject to the requirements of Regulation G and Item 10(e) of Regulation S-K?

Answer: The reference to "funds from operations" in footnote 50, or "FFO," refers to the measure defined as of January 1, 2000, by the National Association of Real Estate Investment Trusts (NAREIT). NAREIT has revised and clarified the definition since 2000. The staff accepts NAREIT's definition of FFO in effect as of May 17, 2016 as a performance measure and does not object to its presentation on a per share basis. [May 17, 2016]

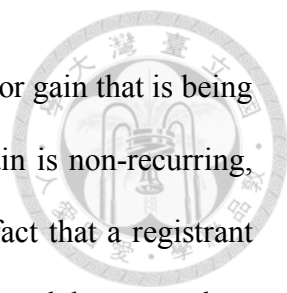
Question 102.02

Question: May a registrant present FFO on a basis other than as defined by NAREIT as of May 17, 2016?

Answer: Yes, provided that any adjustments made to FFO comply with Item 10(e) of Regulation S-K and the measure does not violate Rule 100(b) of Regulation G. Any adjustments made to FFO must comply with the requirements of Item 10(e) of Regulation S-K for a performance measure or a liquidity measure, depending on the nature of the adjustments, some of which may trigger the prohibition on presenting this measure on a per share basis. See Section 100 and Question 102.05. [May 17, 2016]

Question 102.03

Question: Item 10(e) of Regulation S-K prohibits adjusting a non-GAAP financial performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual when the nature of the charge or gain is such that it is reasonably likely to recur within two years or there was a similar charge or gain within the prior two years. Is this prohibition based on the description of the charge or gain, or is it based on the nature of the charge or gain?



Answer: The prohibition is based on the description of the charge or gain that is being adjusted. It would not be appropriate to state that a charge or gain is non-recurring, infrequent or unusual unless it meets the specified criteria. The fact that a registrant cannot describe a charge or gain as non-recurring, infrequent or unusual, however, does not mean that the registrant cannot adjust for that charge or gain. Registrants can make adjustments they believe are appropriate, subject to Regulation G and the other requirements of Item 10(e) of Regulation S-K. See Question 100.01. [May 17, 2016]

Question 102.04

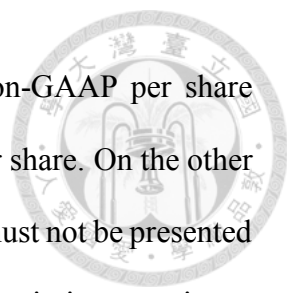
Question: Is the registrant required to use the non-GAAP measure in managing its business or for other purposes in order to be able to disclose it?

Answer: No. Item 10(e)(1)(i)(D) of Regulation S-K states only that, "[t]o the extent material," there should be a statement disclosing the additional purposes, "if any," for which the registrant's management uses the non-GAAP financial measure. There is no prohibition against disclosing a non-GAAP financial measure that is not used by management in managing its business. [Jan. 11, 2010]

Question 102.05

Question: While Item 10(e)(1)(ii) of Regulation S-K does not prohibit the use of per share non-GAAP financial measures, the adopting release for Item 10(e), Exchange Act Release No. 47226, states that "per share measures that are prohibited specifically under GAAP or Commission rules continue to be prohibited in materials filed with or furnished to the Commission." In light of Commission guidance, specifically Accounting Series Release No. 142, Reporting Cash Flow and Other Related Data, and Accounting Standards Codification 230, are non-GAAP earnings per share numbers prohibited in documents filed or furnished with the Commission?

Answer: No. Item 10(e) recognizes that certain non-GAAP per share performance



measures may be meaningful from an operating standpoint. Non-GAAP per share performance measures should be reconciled to GAAP earnings per share. On the other hand, non-GAAP liquidity measures that measure cash generated must not be presented on a per share basis in documents filed or furnished with the Commission, consistent with Accounting Series Release No. 142. Whether per share data is prohibited depends on whether the non-GAAP measure can be used as a liquidity measure, even if management presents it solely as a performance measure. When analyzing these questions, the staff will focus on the substance of the non-GAAP measure and not management's characterization of the measure. [May 17, 2016]

Question 102.06

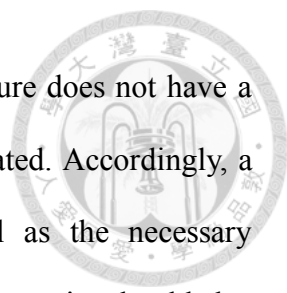
Question: Is Item 10(e)(1)(i) of Regulation S-K, which requires the prominent presentation of, and reconciliation to, the most directly comparable GAAP financial measure or measures, intended to change the staff's practice of requiring the prominent presentation of amounts for the three major categories of the statement of cash flows when a non-GAAP liquidity measure is presented?

Answer: No. The requirements in Item 10(e)(1)(i) are consistent with the staff's practice. The three major categories of the statement of cash flows should be presented when a non-GAAP liquidity measure is presented. [Jan. 11, 2010]

Question 102.07

Question: Some companies present a measure of "free cash flow," which is typically calculated as cash flows from operating activities as presented in the statement of cash flows under GAAP, less capital expenditures. Does Item 10(e)(1)(ii) of Regulation S-K prohibit this measure in documents filed with the Commission?

Answer: No. The deduction of capital expenditures from the GAAP financial measure of cash flows from operating activities would not violate the prohibitions in Item



10(e)(1)(ii). However, companies should be aware that this measure does not have a uniform definition and its title does not describe how it is calculated. Accordingly, a clear description of how this measure is calculated, as well as the necessary reconciliation, should accompany the measure where it is used. Companies should also avoid inappropriate or potentially misleading inferences about its usefulness. For example, "free cash flow" should not be used in a manner that inappropriately implies that the measure represents the residual cash flow available for discretionary expenditures, since many companies have mandatory debt service requirements or other non-discretionary expenditures that are not deducted from the measure. Also, free cash flow is a liquidity measure that must not be presented on a per share basis. See Question 102.05. [May 17, 2016]

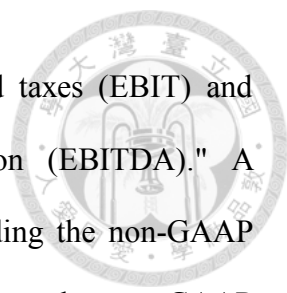
Question 102.08

Question: Does Item 10(e) of Regulation S-K apply to filed free writing prospectuses?

Answer: Regulation S-K applies to registration statements filed under the Securities Act, as well as registration statements, periodic and current reports and other documents filed under the Exchange Act. A free writing prospectus is not filed as part of the issuer's registration statement, unless the issuer files it on Form 8-K or otherwise includes it or incorporates it by reference into the registration statement. Therefore, Item 10(e) of Regulation S-K does not apply to a filed free writing prospectus unless the free writing prospectus is included in or incorporated by reference into the issuer's registration statement or included in an Exchange Act filing. [Jan. 11, 2010]

Question 102.09

Question: Item 10(e)(1)(ii)(A) of Regulation S-K prohibits "excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity



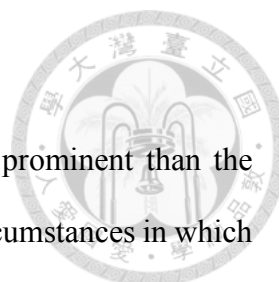
measures, other than the measures earnings before interest and taxes (EBIT) and earnings before interest, taxes, depreciation and amortization (EBITDA)." A company's credit agreement contains a material covenant regarding the non-GAAP financial measure "Adjusted EBITDA." If disclosed in a filing, the non-GAAP financial measure "Adjusted EBITDA" would violate Item 10(e), as it excludes charges that are required to be cash settled. May a company nonetheless disclose this non-GAAP financial measure?

Answer: Yes. The prohibition in Item 10(e) notwithstanding, because MD&A requires disclosure of material items affecting liquidity, if management believes that the credit agreement is a material agreement, that the covenant is a material term of the credit agreement and that information about the covenant is material to an investor's understanding of the company's financial condition and/or liquidity, then the company may be required to disclose the measure as calculated by the debt covenant as part of its MD&A. In disclosing the non-GAAP financial measure in this situation, a company should consider also disclosing the following:

- the material terms of the credit agreement including the covenant;
- the amount or limit required for compliance with the covenant; and
- the actual or reasonably likely effects of compliance or non-compliance with the covenant on the company's financial condition and liquidity. [Jan. 11, 2010]

Question 102.10

Question: Item 10(e)(1)(i)(A) of Regulation S-K requires that when a registrant presents a non-GAAP measure it must present the most directly comparable GAAP measure with equal or greater prominence. This requirement applies to non-GAAP measures presented in documents filed with the Commission and also earnings releases furnished under Item 2.02 of Form 8-K. Are there examples of disclosures that would

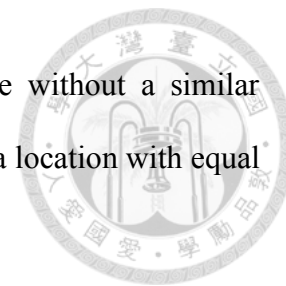


cause a non-GAAP measure to be more prominent?

Answer: Yes. Although whether a non-GAAP measure is more prominent than the comparable GAAP measure generally depends on the facts and circumstances in which the disclosure is made, the staff would consider the following examples of disclosure of non-GAAP measures as more prominent:

- Presenting a full income statement of non-GAAP measures or presenting a full non-GAAP income statement when reconciling non-GAAP measures to the most directly comparable GAAP measures;
- Omitting comparable GAAP measures from an earnings release headline or caption that includes non-GAAP measures;
- Presenting a non-GAAP measure using a style of presentation (e.g., bold, larger font) that emphasizes the non-GAAP measure over the comparable GAAP measure;
- A non-GAAP measure that precedes the most directly comparable GAAP measure (including in an earnings release headline or caption);
- Describing a non-GAAP measure as, for example, “record performance” or “exceptional” without at least an equally prominent descriptive characterization of the comparable GAAP measure;
- Providing tabular disclosure of non-GAAP financial measures without preceding it with an equally prominent tabular disclosure of the comparable GAAP measures or including the comparable GAAP measures in the same table;
- Excluding a quantitative reconciliation with respect to a forward-looking non-GAAP measure in reliance on the “unreasonable efforts” exception in Item 10(e)(1)(i)(B) without disclosing that fact and identifying the information that is unavailable and its probable significance in a location of equal or greater prominence; and

- Providing discussion and analysis of a non-GAAP measure without a similar discussion and analysis of the comparable GAAP measure in a location with equal or greater prominence. [May 17, 2016]



Question 102.11

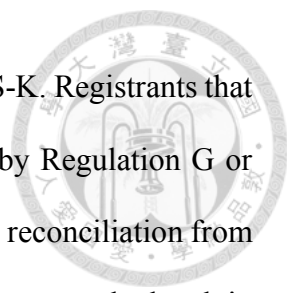
Question: How should income tax effects related to adjustments to arrive at a non-GAAP measure be calculated and presented?

Answer: A registrant should provide income tax effects on its non-GAAP measures depending on the nature of the measures. If a measure is a liquidity measure that includes income taxes, it might be acceptable to adjust GAAP taxes to show taxes paid in cash. If a measure is a performance measure, the registrant should include current and deferred income tax expense commensurate with the non-GAAP measure of profitability. In addition, adjustments to arrive at a non-GAAP measure should not be presented "net of tax." Rather, income taxes should be shown as a separate adjustment and clearly explained. [May 17, 2016]

Question 102.12

Question: A registrant discloses a financial measure or information that is not in accordance with GAAP or calculated exclusively from amounts presented in accordance with GAAP. In some circumstances, this financial information may have been prepared in accordance with guidance published by a government, governmental authority or self-regulatory organization that is applicable to the registrant, although the information is not required disclosure by the government, governmental authority or self-regulatory organization. Is this information considered to be a "non-GAAP financial measure" for purposes of Regulation G and Item 10 of Regulation S-K?

Answer: Yes. Unless this information is required to be disclosed by a system of regulation that is applicable to the registrant, it is considered to be a "non-GAAP



financial measure" under Regulation G and Item 10 of Regulation S-K. Registrants that disclose such information must provide the disclosures required by Regulation G or Item 10 of Regulation S-K, if applicable, including the quantitative reconciliation from the non-GAAP financial measure to the most comparable measure calculated in accordance with GAAP. This reconciliation should be in sufficient detail to allow a reader to understand the nature of the reconciling items. [Apr. 24, 2009]

Section 103. EBIT and EBITDA

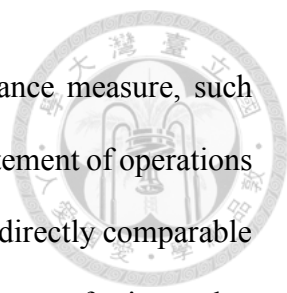
Question 103.01

Question: Exchange Act Release No. 47226 describes EBIT as "earnings before interest and taxes" and EBITDA as "earnings before interest, taxes, depreciation and amortization." What GAAP measure is intended by the term "earnings"? May measures other than those described in the release be characterized as "EBIT" or "EBITDA"? Does the exception for EBIT and EBITDA from the prohibition in Item 10(e)(1)(ii)(A) of Regulation S-K apply to these other measures?

Answer: "Earnings" means net income as presented in the statement of operations under GAAP. Measures that are calculated differently than those described as EBIT and EBITDA in Exchange Act Release No. 47226 should not be characterized as "EBIT" or "EBITDA" and their titles should be distinguished from "EBIT" or "EBITDA," such as "Adjusted EBITDA." These measures are not exempt from the prohibition in Item 10(e)(1)(ii)(A) of Regulation S-K, with the exception of measures addressed in Question 102.09. [Jan. 11, 2010]

Question 103.02

Question: If EBIT or EBITDA is presented as a performance measure, to which GAAP financial measure should it be reconciled?



Answer: If a company presents EBIT or EBITDA as a performance measure, such measures should be reconciled to net income as presented in the statement of operations under GAAP. Operating income would not be considered the most directly comparable GAAP financial measure because EBIT and EBITDA make adjustments for items that are not included in operating income. In addition, these measures must not be presented on a per share basis. See Question 102.05. [May 17, 2016]

Section 104. Segment Information

Question 104.01

Question: Is segment information that is presented in conformity with Accounting Standards Codification 280, pursuant to which a company may determine segment profitability on a basis that differs from the amounts in the consolidated financial statements determined in accordance with GAAP, considered to be a non-GAAP financial measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: No. Non-GAAP financial measures do not include financial measures that are required to be disclosed by GAAP. Exchange Act Release No. 47226 lists "measures of profit or loss and total assets for each segment required to be disclosed in accordance with GAAP" as examples of such measures. The measure of segment profit or loss and segment total assets under Accounting Standards Codification 280 is the measure reported to the chief operating decision maker for purposes of making decisions about allocating resources to the segment and assessing its performance.

The list of examples in Exchange Act Release No. 47226 is not exclusive. As an additional example, because Accounting Standards Codification 280 requires or expressly permits the footnotes to the company's consolidated financial statements to include specific additional financial information for each segment, that information

also would be excluded from the definition of non-GAAP financial measures. [Jan. 11, 2010]



Question 104.02

Question: Does Item 10(e)(1)(ii) of Regulation S-K prohibit the discussion in MD&A of segment information determined in conformity with Accounting Standards Codification 280?

Answer: No. Where a company includes in its MD&A a discussion of segment profitability determined consistent with Accounting Standards Codification 280, which also requires that a footnote to the company's consolidated financial statements provide a reconciliation, the company also should include in the segment discussion in the MD&A a complete discussion of the reconciling items that apply to the particular segment being discussed. In this regard, see Financial Reporting Codification Section 501.06.a, footnote 28. [Jan. 11, 2010]

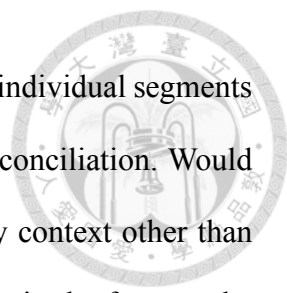
Question 104.03

Question: Is a measure of segment profit/loss or liquidity that is not in conformity with Accounting Standards Codification 280 a non-GAAP financial measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: Yes. Segment measures that are adjusted to include amounts excluded from, or to exclude amounts included in, the measure reported to the chief operating decision maker for purposes of making decisions about allocating resources to the segment and assessing its performance do not comply with Accounting Standards Codification 280. Such measures are, therefore, non-GAAP financial measures and subject to all of the provisions of Regulation G and Item 10(e) of Regulation S-K. [Jan. 11, 2010]

Question 104.04

Question: In the footnote that reconciles the segment measures to the consolidated



financial statements, a company may total the profit or loss for the individual segments as part of the Accounting Standards Codification 280 required reconciliation. Would the presentation of the total segment profit or loss measure in any context other than the Accounting Standards Codification 280 required reconciliation in the footnote be the presentation of a non-GAAP financial measure?

Answer: Yes. The presentation of the total segment profit or loss measure in any context other than the Accounting Standards Codification 280 required reconciliation in the footnote would be the presentation of a non-GAAP financial measure because it has no authoritative meaning outside of the Accounting Standards Codification 280 required reconciliation in the footnotes to the company's consolidated financial statements. [Jan. 11, 2010]

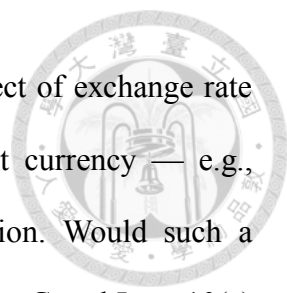
Question 104.05

Question: Company X presents a table illustrating a breakdown of revenues by certain products, but does not sum this to the revenue amount presented on Company X's financial statements. Is the information in the table considered a non-GAAP financial measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: No, assuming the product revenue amounts are calculated in accordance with GAAP. The presentation would be considered a non-GAAP financial measure, however, if the revenue amounts are adjusted in any manner. [Jan. 11, 2010]

Question 104.06

Question: Company X has operations in various foreign countries where the local currency is used to prepare the financial statements which are translated into the reporting currency under the applicable accounting standards. In preparing its MD&A, Company X will explain the reasons for changes in various financial statement captions. A portion of these changes will be attributable to changes in exchange rates between



periods used for translation. Company X wants to isolate the effect of exchange rate differences and will present financial information in a constant currency — e.g., assume a constant exchange rate between periods for translation. Would such a presentation be considered a non-GAAP measure under Regulation G and Item 10(e) of Regulation S-K?

Answer: Yes. Company X may comply with the reconciliation requirements of Regulation G and Item 10(e) by presenting the historical amounts and the amounts in constant currency and describing the process for calculating the constant currency amounts and the basis of presentation. [Jan. 11, 2010]

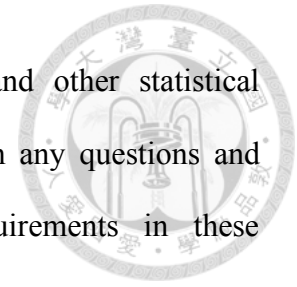
Section 105. Item 2.02 of Form 8-K

Question 105.01

Question: Item 2.02 of Form 8-K contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its web site any financial and other statistical information contained in the presentation, together with any information that would be required by Regulation G. Would an audio file of the initial webcast satisfy this condition to the exemption?

Answer: Yes, provided that: (1) the audio file contains all material financial and other statistical information included in the presentation that was not previously disclosed, and (2) investors can access it and replay it through the company's web site. Alternatively, slides or a similar presentation posted on the web site at the time of the presentation containing the required, previously undisclosed, material financial and other statistical information would satisfy the condition. In each case, the company

must provide all previously undisclosed material financial and other statistical information, including information provided in connection with any questions and answers. Regulation FD also may impose disclosure requirements in these circumstances. [Jan. 11, 2010]



Question 105.02

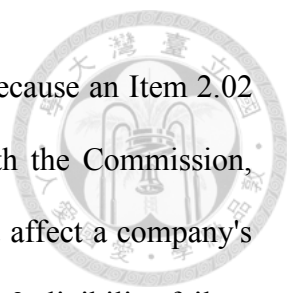
Question: Item 2.02 of Form 8-K contains a conditional exemption from its requirement to furnish a Form 8-K where earnings information is presented orally, telephonically, by webcast, by broadcast or by similar means. Among other conditions, the company must provide on its web site any material financial and other statistical information not previously disclosed and contained in the presentation, together with any information that would be required by Regulation G. When must all of this information appear on the company's web site?

Answer: The required information must appear on the company's web site at the time the oral presentation is made. In the case of information that is not provided in a presentation itself but, rather, is disclosed unexpectedly in connection with the question and answer session that was part of that oral presentation, the information must be posted on the company's web site promptly after it is disclosed. Any requirements of Regulation FD also must be satisfied. A webcast of the oral presentation would be sufficient to meet this requirement. [Jan. 11, 2010]

Question 105.03

Question: Does a company's failure to furnish to the Commission the Form 8-K required by Item 2.02 in a timely manner affect the company's eligibility to use Form S-3?

Answer: No. Form S-3 requires the company to have filed in "a timely manner all reports required to be filed in twelve calendar months and any portion of a month



immediately preceding the filing of the registration statement." Because an Item 2.02 Form 8-K is furnished to the Commission, rather than filed with the Commission, failure to furnish such a Form 8-K in a timely manner would not affect a company's eligibility to use Form S-3. While not affecting a company's Form S-3 eligibility, failure to comply with Item 2.02 of Form 8-K would, of course, be a violation of Section 13(a) of the Exchange Act and the rules thereunder. [Jan. 11, 2010]

Question 105.04 [withdrawn]

Question 105.05

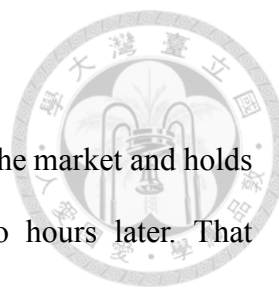
Question: Company X files its quarterly earnings release as an exhibit to its Form 10-Q on Wednesday morning, prior to holding its earnings conference call Wednesday afternoon. Assuming that all of the other conditions of Item 2.02(b) are met, may the company rely on the exemption for its conference call even if it does not also furnish the earnings release in an Item 2.02 Form 8-K?

Answer: Yes. Company X's filing of the earnings release as an exhibit to its Form 10-Q, rather than in an Item 2.02 Form 8-K, before the conference call takes place, would not preclude reliance on the exemption for the conference call. [Jan. 11, 2010]

Question 105.06

Question: Company A issues a press release announcing its results of operations for a just-completed fiscal quarter, including its expected adjusted earnings (a non-GAAP financial measure) for the fiscal period. Would this press release be subject to Item 2.02 of Form 8-K?

Answer: Yes, because it contains material, non-public information regarding its results of operations for a completed fiscal period. The adjusted earnings range presented would be subject to the requirements of Item 2.02 applicable to non-GAAP financial measures. [Jan. 11, 2010]



Question 105.07

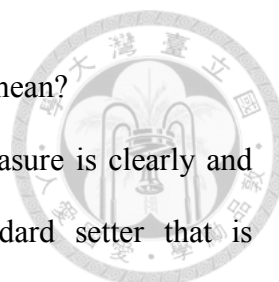
Question: A company issues its earnings release after the close of the market and holds a properly noticed conference call to discuss its earnings two hours later. That conference call contains material, previously undisclosed, information of the type described under Item 2.02 of Form 8-K. Because of this timing, the company is unable to furnish its earnings release on a Form 8-K before its conference call. Accordingly, the company cannot rely on the exemption from the requirement to furnish the information in the conference call on a Form 8-K. What must the company file with regard to its conference call?

Answer: The company must furnish the material, previously non-public, financial and other statistical information required to be furnished on Item 2.02 of Form 8-K as an exhibit to a Form 8-K and satisfy the other requirements of Item 2.02 of Form 8-K. A transcript of the portion of the conference call or slides or a similar presentation including such information will satisfy this requirement. In each case, all material, previously undisclosed, financial and other statistical information, including that provided in connection with any questions and answers, must be provided. [Jan. 15, 2010]

Section 106. Foreign Private Issuers

Question 106.01

Question: The Note to Item 10(e) of Regulation S-K permits a foreign private issuer to include in its filings a non-GAAP financial measure that otherwise would be prohibited by Item 10(e)(1)(ii) if, among other things, the non-GAAP financial measure is required or expressly permitted by the standard setter that is responsible for establishing the GAAP used in the company's primary financial statements included in



its filing with the Commission. What does "expressly permitted" mean?

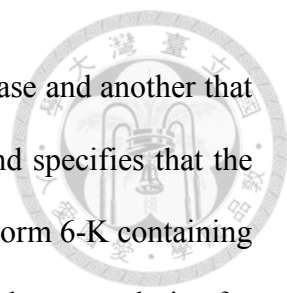
Answer: A measure is "expressly permitted" if the particular measure is clearly and specifically identified as an acceptable measure by the standard setter that is responsible for establishing the GAAP used in the company's primary financial statements included in its filing with the Commission.

The concept of "expressly permitted" can be also be demonstrated with explicit acceptance of a presentation by the primary securities regulator in the foreign private issuer's home country jurisdiction or market. Explicit acceptance by the regulator would include (1) published views of the regulator or members of the regulator's staff or (2) a letter from the regulator or its staff to the foreign private issuer indicating the acceptance of the presentation — which would be provided to the Commission's staff upon request. [Jan. 11, 2010]

Question 106.02

Question: A foreign private issuer furnishes a press release on Form 6-K that includes a section with non-GAAP financial measures. Can a foreign private issuer incorporate by reference into a Securities Act registration statement only those portions of the furnished press release that do not include the non-GAAP financial measures?

Answer: Yes. Reports on Form 6-K are not incorporated by reference automatically into Securities Act registration statements. In order to incorporate a Form 6-K into a Securities Act registration statement, a foreign private issuer must specifically provide for such incorporation by reference in the registration statement and in any subsequently submitted Form 6-K. See Item 6(c) of Form F-3. Where a foreign private issuer wishes to incorporate by reference a portion or portions of the press release provided on a Form 6-K, the foreign private issuer should either: (1) specify in the Form 6-K those portions of the press release to be incorporated by reference, or (2)



furnish two Form 6-K reports, one that contains the full press release and another that contains the portions that would be incorporated by reference (and specifies that the second Form 6-K is so incorporated). Using a separate report on Form 6-K containing the portions that would be incorporated by reference may provide more clarity for investors in most circumstances. A company must also consider whether its disclosure is rendered misleading if it incorporates only a portion (or portions) of a press release.

[Jan. 11, 2010]

Question 106.03

Question: A foreign private issuer publishes a non-GAAP financial measure that does not comply with Regulation G, in reliance on Rule 100(c), and then furnishes the information in a report on Form 6-K. Must the foreign private issuer comply with Item 10(e) of Regulation S-K with respect to that information if the company chooses to incorporate that Form 6-K report into a filed Securities Act registration statement (other than an MJDS registration statement)?

Answer: Yes, the company must comply with all of the provisions of Item 10(e) of Regulation S-K. [Jan. 11, 2010]

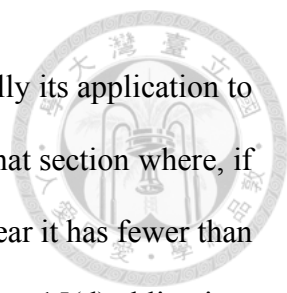
Question 106.04

Question: If a Canadian company includes a non-GAAP financial measure in an annual report on Form 40-F, does the company need to comply with Regulation G or Item 10(e) of Regulation S-K with respect to that information if the company files a non-MJDS Securities Act registration statement that incorporates by reference the Form 40-F?

Answer: No. Information included in a Form 40-F is not subject to Regulation G or Item 10(e) of Regulation S-K. [Jan. 11, 2010]

Section 107. Voluntary Filers

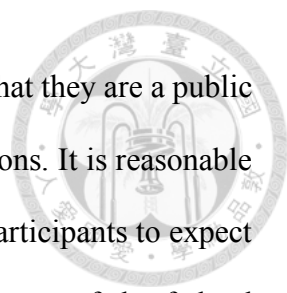
Question 107.01



Question: Section 15(d) of the Exchange Act suspends automatically its application to any company that would be subject to the filing requirements of that section where, if other conditions are met, on the first day of the company's fiscal year it has fewer than 300 holders of record of the class of securities that created the Section 15(d) obligation. This suspension, which relates to the fiscal year in which the fewer than 300 record holders determination is made on the first day thereof, is automatic and does not require any filing with the Commission. The Commission adopted Rule 15d-6 under the Exchange Act to require the filing of a Form 15 as a notice of the suspension of a company's reporting obligation under Section 15(d). Such a filing, however, is not a condition to the suspension. A number of companies whose Section 15(d) reporting obligation is suspended automatically by the statute choose not to file the notice required by Rule 15d-6 and continue to file Exchange Act reports as though they continue to be required. Must a company whose reporting obligation is suspended automatically by Section 15(d) but continues to file periodic reports as though it were required to file periodic reports comply with Regulation G and the requirements of Item 10(e) of Regulation S-K?

Answer: Yes. Regulation S-K relates to filings with the Commission. Accordingly, a company that is making filings as described in this question must comply with Regulation S-K or Form 20-F, as applicable, in its filings.

As to other public communications, any company "that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934" must comply with Regulation G. The application of this standard to those companies that no longer are "required" to report under Section 15(d) but choose to continue to report presents a difficult dilemma, as those companies technically are not subject to Regulation G but



their continued filing is intended to and does give the appearance that they are a public company whose disclosure is subject to the Commission's regulations. It is reasonable that this appearance would cause shareholders and other market participants to expect and rely on a company's required compliance with the requirements of the federal securities laws applicable to companies reporting under Section 15(d). Accordingly, while Regulation G technically does not apply to a company such as the one described in this question, the failure of such a company to comply with all requirements (including Regulation G) applicable to a Section 15(d)-reporting company can raise significant issues regarding that company's compliance with the anti-fraud provisions of the federal securities laws. [Jan. 11, 2010]

Section 108. Compensation Discussion and Analysis/Proxy Statement

Question 108.01

Question: Instruction 5 to Item 402(b) provides that "[d]isclosure of target levels that are non-GAAP financial measures will not be subject to Regulation G and Item 10(e); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements." Does this instruction extend to non-GAAP financial information that does not relate to the disclosure of target levels, but is nevertheless included in Compensation Discussion & Analysis ("CD&A") or other parts of the proxy statement - for example, to explain the relationship between pay and performance?

Answer: No. Instruction 5 to Item 402(b) is limited to CD&A disclosure of target levels that are non-GAAP financial measures. If non-GAAP financial measures are presented in CD&A or in any other part of the proxy statement for any other purpose, such as to explain the relationship between pay and performance or to justify certain levels or

amounts of pay, then those non-GAAP financial measures are subject to the requirements of Regulation G and Item 10(e) of Regulation S-K.

In these pay-related circumstances only, the staff will not object if a registrant includes the required GAAP reconciliation and other information in an annex to the proxy statement, provided the registrant includes a prominent cross-reference to such annex. Or, if the non-GAAP financial measures are the same as those included in the Form 10-K that is incorporating by reference the proxy statement's Item 402 disclosure as part of its Part III information, the staff will not object if the registrant complies with Regulation G and Item 10(e) by providing a prominent cross-reference to the pages in the Form 10-K containing the required GAAP reconciliation and other information.

[July 8, 2011]

