Falling out of the GAAP: Recent SEC Staff Comments on Energy Companies' Non-GAAP Financial Measures Disclosures

By Bruce Newsome | January 24, 2017

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In May 2016, the Division of Corporation Finance of the Securities and Exchange Commission ("SEC") added new Compliance & Disclosure Interpretations ("C&DIs") to the existing catalog of C&DIs that addresses disclosures of "non-GAAP financial measures."[1]

Non-GAAP financial measures are numerical metrics of a registrant's historical or future financial performance, financial position or cash flows that in various degrees adjust amounts calculated and presented in accordance with U.S. generally accepted accounting principles ("GAAP"). They are used by companies to provide additional insights into their businesses, and are often driven by expectations of investors and analysts to have a metric with which to compare companies within the same industry. For example, many exploration and production companies present non-GAAP financial measures such as earnings before interest, taxes, depreciation, amortization and exploration expenses (EBITDAX), and adjusted versions of EBITDAX. For yield-generating midstream master limited partnerships ("MLPs"), distributable cash flow tends to be an important non-GAAP financial measure.

The SEC's Regulation G and Item 10(e) of Regulation S-K ("Item 10(e)") govern the presentation of companies' non-GAAP financial measures in their SEC filings, earnings releases and investor presentations, and on companies' websites. These regulations essentially require that each non-GAAP financial measure be a relevant, meaningful and useful measure that does not mislead investors.

If you have any questions about this topic, please contact a member of our Capital Markets and Securities Practice Group.

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Falling-Out-of-the-GAAP.pdf

[1] The issuance of these new C&DIs was the subject of a previous Haynes Boone *Client Alert*, to which reference is made for more detail regarding non-GAAP financial measures and these new interpretations. *See* Matthew L. Fry, Lucy Liu, *Client Alert:* "SEC Issues Additional Guidance Regarding the Use of Non-GAAP Financial Measures" (June 7, 2016).

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