

## US Corporate Law News: SEC issues guidance regarding non-GAAP financial measures in M&A context

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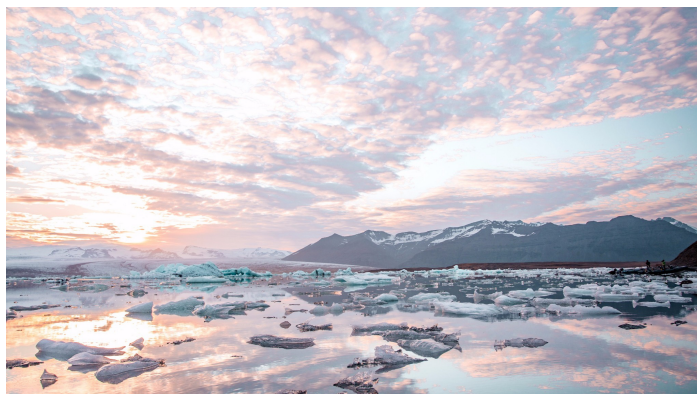
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On April 4, 2018, the SEC published two new Compliance & Disclosure Interpretations (C&DIs) regarding non-GAAP financial measures in connection with business combinations. It advised that it does not consider as “non-GAAP financial measures” financial measures included in forecasts provided to a financial advisor and used in connection with a business combination transaction (or also provided to the board of directors or a committee thereof), so long as (a) the measures are included in the forecasts for purposes of rendering an opinion that is materially related to the transaction, and (b) the forecasts are disclosed to comply with Regulation M-A Item 1015 or state or foreign law requirements on disclosure of the advisor’s analyses or substantive work. The SEC also advised that if a registrant determines that forecasts exchanged between parties in a business combination transaction are material and that disclosure is mandatory to comply with anti-fraud or other federal securities liability provisions, the financial measures shall not be considered “non-GAAP financial measures”. For more information on new C&DIs 101.02 and 101.03, see <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>.

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