Summary of Non-GAAP CDI Revisions
As of May 17, 2016

There is one entirely new section, "Section 100. General," which includes 4 new questions addressing when a non-GAAP number might be "misleading" under 100(b):

1.	**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]
2.	**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]
3.	**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]
4.	**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	**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

		documents filed or furnished with the Commission or provided elsewhere, such as on company websites?	financial statement line items other than revenue may also violate Rule 100(b) of Regulation G. [May 17, 2016]

In addition, 8 old interpretations have been revised, 7 of which are substantive:

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1.	**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 ~~as~~ defined ~~and clarified,~~ 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 ~~this~~NAREIT's definition of FFO in effect as of May 17, 2016 as a performance measure and~~, as a performance measure, it may be presented~~ does not object to its presentation on a per share basis. ~~[Jan. 11, 2010~~ [May 17, 2016]
2.	**Question 102.02**	**Question**: May a registrant present ~~"funds from operations"~~FFO on a basis other than as defined ~~and clarified,~~by NAREIT as of ~~January 1, 2000, by the National Association of Real Estate Investment Trusts~~May 17, 2016?	**Answer**: Yes, provided that any adjustments made to ~~"funds from operations," as defined in footnote 50 of Exchange Act Release No. 47226,~~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 ~~"funds from operations" as defined in footnote 50~~FFO must comply with the requirements of Item 10(e) of Regulation S-K for a performance measure or a liquidity measure, depending on ~~how it is presented. If~~ the ~~adjusted~~nature of the adjustments, some of which may trigger the prohibition on presenting this measure ~~is a performance measure, it may be presented on~~ on a per share basis~~; if it is a liquidity measure, it~~

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			~~may not be. [Jan. 11, 2010~~. See Section 100 and Question 102.05. [May 17, 2016]
3.	**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. ~~[Jan. 11, 2010]~~See Question 100.01. [May 17, 2016]
4.	**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~~,~~ ~~such as~~ that measure cash ~~flow,~~ ~~should~~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. ~~[Jan. 11, 2010]~~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]
5.	**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. ~~[Jan. 11, 2010]~~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]
6.	**Question 102.10**	~~**Question:** Is it appropriate to present a full non-GAAP income statement for purposes of reconciling non-GAAP measures to the most directly comparable GAAP measures?~~**Question:** Item	**Answer:** ~~Generally, no.~~ Yes. Although whether a non-GAAP measure is more prominent than the comparable GAAP measure generally depends on

		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?	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 ~~non-GAAP~~ income statement ~~may attach undue prominence~~of non-GAAP measures or presenting a full non-GAAP income statement when reconciling non-GAAP measures to the ~~non-GAAP~~ 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~~. [Jan. 11, 2010~~ 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]
7.	**Question 102.11**	**Question:** ~~May a registrant present an adjustment "net of~~ How should income tax~~" when reconciling~~ effects related to adjustments to arrive at a non-GAAP ~~performance~~ measure ~~to the most directly comparable GAAP measure~~be calculated and presented?	~~**Answer:** Yes, provided that the tax effect of each reconciling item is disclosed parenthetically or in a footnote to the reconciliation. Alternatively, the company can present the tax effect in one line in the reconciliation. Regardless of the format of the presentation, registrants should disclose how the tax effect was calculated. [Jan. 11, 2010]~~**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]
8.	**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. ~~[Jan. 11, 2010]~~In addition, these measures must not be presented on a per share basis. See Question 102.05. [May 17, 2016]