

Q2 REPORTING TRENDS: FEW JUMP ON EBITDAC BANDWAGON

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Based on Q2 reporting to date, few companies opted to present non-GAAP financial measures using the new metric term "EBITDAC" (earnings before interest, tax, depreciation, amortization - and COVID-19). That is not surprising, given the concerns raised by credit rating agencies, the CFA Institute and U.S. creditors, among others, about the potential for EBITDAC to distort and misrepresent companies' earnings.

Instead, many companies appeared to heed SEC advice, including CF Disclosure Guidance: Topic No. 9A and CF Disclosure Guidance: Topic No. 9. In addition to including discussions of COVID-19 business impacts in earnings releases, many included such discussions in MD&A in the Q2 Form 10-Q filed with the SEC. Rather than disclosing the impact of COVID-19 as a non-GAAP financial measure, many presented traditional operating or statistical metrics while separately quantifying the effect of the pandemic, such as "Operating expenses increased 25% compared to the second quarter of 2019, 15% of which was due to COVID-19 supplies, cleaning and other incremental costs."

While few companies used the EBITDAC label as noted above, some appeared to be using the concept without the label. For example, some adjusted their adjusted EBITDA for COVID-19 expenses or presented gross margin without COVID-19 impacts. Such COVID-19 adjustments may be more likely to draw SEC scrutiny during ordinary periodic filing reviews, especially when viewed in hindsight. The staff has taken the position that "presenting a performance measure that excludes normal, recurring, cash operating expenses necessary to operate a registrant's business could be misleading." If and as the pandemic continues and operating practices change, companies should consider whether any of their COVID-19-related expenses, such as supplies, cleaning and sick pay, might no longer be viewed as unusual or non-recurring.

As the SEC staff stated in CF Disclosure Guidance: Topic No. 9: "We remind companies that we do not believe it is appropriate for a company to present non-GAAP financial measures or metrics for the sole purpose of presenting a more favorable view of the company." Further, the staff believes it would be appropriate to highlight why management finds the measure useful and how it helps investors assess the impact of COVID-19 on the company's financial position and results of operations.

RELATED PRACTICE AREAS

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