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SEC comment letters in the banking industry: 2021 edition

By Mark C. Shannon, CPA, and Dana S. Ashby, CPA





Introduction

While 2021 has witnessed new leadership and new agenda priorities at the Securities and Exchange Commission (SEC), including a focus on environmental, social, and governance (ESG) topics, the Division of Corporation Finance (CorpFin) continues to fulfill its mandate under the *Sarbanes-Oxley Act of 2002* to review the filings of each registrant at least once every three years. CorpFin staff selectively reviews filings under the *Securities Act* and the *Exchange Act*, and each review might or might not result in a comment letter. In the past, the CorpFin staff has released banking-specific observations from its filing reviews.¹ Notwithstanding themes in prior staff observations, which remain relevant when material, the topics on which staff issues comments continually evolve.

The current financial reporting environment for banks is unique given the dynamic between entities that have adopted the Current Expected Credit Losses (CECL) standard and those that have not. Crowe examines SEC comments for each group to identify new themes and trends.

This report summarizes recent themes from publicly available SEC comment letters, for registrants in the banking industry. Each includes example SEC comments. This edition includes comments on new allowance for credit losses disclosure and non-GAAP measures for entities that have adopted CECL, and in the areas of credit risk, revenue recognition, emerging growth companies (EGC), mutual conversions, and initial registration statements. Recent comments have referenced the COVID-19 pandemic or the *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act), and example pandemic-related comments are included in the relevant themes. Our 2021 edition also adds an “Other topics” section that provides example CorpFin comments related to London Interbank Offered Rate (LIBOR) transition, comments on when an entity determines it has errors in its previously issued financial statements, and potential future CorpFin ESG comments.

We hope you find this publication useful as you consider any enhancements to your disclosures.

¹ See, for example, <https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic5.htm>

Acquired loans

Acquired loans, whether acquired separately in pools of loans or as part of a whole bank or branch acquisition, might have a significant impact on a registrant's loan portfolio including trends in operating performance and asset quality metrics. Whether or not an entity has adopted CECL, CorpFin staff might request that registrants disaggregate, in both footnote disclosures and management's discussion and analysis² (MD&A), information related to originated loans and acquired loans, when material to an understanding of the entity's results of operations. For entities that have not yet adopted CECL, CorpFin often asks registrants to further disaggregate disclosures between purchased credit impaired (PCI) loans accounted for under Accounting Standards Codification (ASC) 310-30 and non-purchased credit impaired (non-PCI) loans accounted for under ASC 310-20.

Crowe practice note:

Similar to the different accounting models in ASC 310-20 and ASC 310-30 prior to the adoption of CECL, Accounting Standards Update (ASU) 2016-13 (CECL) specifies a different accounting model for non-purchased credit deteriorated (non-PCD) versus purchased credit deteriorated (PCD) financial assets. Though not frequently observed in publicly available comment letters to date, it is possible CorpFin will issue comments requesting further disaggregation of originated loans and acquired loans, including further disaggregation of non-PCD and PCD assets, to the extent material to an understanding of the registrant's loan portfolio and results of operations.

On July 14, 2021, the FASB tentatively decided to add a project to its agenda to address the accounting for acquired financial assets, including non-PCD and PCD financial assets, which could impact future staff comments in this area.

² See Item 303 of Regulation S-K.

Example SEC comments:

Please disclose specific information that enables the reader to more clearly understand the impact on the periods presented, including:

- The balances of acquired and originated loans
- Asset quality data and ratios of acquired and originated loans
- The remaining purchase accounting discounts
- The impact on net interest income and the net interest margin for the periods presented from acquired and originated loans
- Acquired loans classified as nonaccrual, as impaired, as loans greater than 90 days and accruing, or as a troubled debt restructuring

In order to provide consistent presentation of credit quality metrics throughout your filings, please consider revising future filings to present all credit quality metrics (including total portfolio loans, past-due loans, nonaccrual loans, impaired loans, credit quality indicators, and allowance for loan loss activity) by originated loans, acquired loans using ASC 310-20 accounting, and acquired credit impaired loans using ASC 310-30 accounting.

In addition, please make sure your discussions of the loan portfolio in MD&A provide a similar consistent presentation throughout.

We note from your disclosure on Page XX that \$AA million, or BB% of your total loans, consisted of acquired loans. Given the significant impact that acquisitions have had on your credit metrics and trends, please revise your filing to present all loan information and credit quality metrics by originated loans, acquired loans accounted for under ASC 310-20, and acquired credit impaired loans accounted for under ASC 310-30. Further, please revise your discussion of your loan portfolio and related credit metrics provided throughout MD&A to include an enhanced discussion and analysis for these groups of loans in order to better explain the relationship of your credit quality indicators and trends.

Allowance for credit losses (ACL) – after the adoption of CECL

CorpFin frequently comments on transition disclosures, accounting policy disclosures, and other related disclosures when an entity adopts a major new standard (for example, CECL).

Example SEC comments:

You disclose that you adopted ASU 2016-13, “Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,” on Jan. 1, 2020. Please enhance future filings to disclose how the adoption changed your allowance for credit losses methodology and disclose your revised accounting policy. Refer to ASC 326-10-65. Provide us with a draft of your proposed disclosure.

Please revise future filing to discuss the reasonable and supportable forecast used in your current estimate of credit losses. Refer to ASC 326-20-50-11b for guidance.

You disclose that you adopted ASU 2016-13, “Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,” on Jan. 1, 2020, using the modified retrospective application and that there was not any cumulative effect adjustment upon adoption. Please address the following:

- In the rollforward of your allowance for credit losses, you disclose a provision benefit of \$AA million for the nine months ended Sept. 30, 2020, for adoption of ASC 326. Tell us when and how the benefit was recognized in the financial statements.
- In the rollforward of your allowance for credit losses, you disclose a (benefit) provision for credit losses of (\$BB) million and \$CC million for the three and nine months ended Sept. 30, respectively. Tell us how this reconciles to the \$DD million and \$EE million provision for credit losses recognized in the consolidated income statements for the same periods.
- Tell us why the beginning balance of the allowance for credit losses in the June 30, 2020, rollforward is \$FF million versus an ending balance of \$GG million as disclosed in your March 31, 2020, 10-Q.

We note that through Sept. 30, 202X, you recognized a credit loss provision for your Federal Home Loan Mortgage Corp. beneficial interest securities-interest-only strips of \$A million, which you attribute to a change in the interest-rate environment and prepayment speeds. We also note on Page X that you disclose that the significant assumptions in the valuation of these Level 3 securities as of Sept. 30, 202X, and Dec. 31, 201X, included prepayment rates ranging from XX% to XX% and discount rates ranging from X.XX% to XX%. Please revise your disclosure in future filings to address why these significant unobservable inputs have not changed despite your recognition of a related credit loss provision.



Allowance for loan and lease losses (ALLL) – prior to the adoption of CECL

CorpFin reminds registrants of their obligations under ASC 310 to disclose both quantitative and qualitative information for impaired loans and loan modifications and how those affect the registrants' ALLL.

Example SEC comments:

Please provide all of the impaired loan disclosures required by ASC 310-10-50-15 and separately provide the required disclosures pursuant to ASC 310-30-50-2 related to your loans acquired with deteriorated credit quality. Please also clearly disclose what loans are included in your impaired loan balances for each period presented.

Please disclose how the loans were modified and the financial effects of the modifications. Please refer to ASC 310-10-50-33(a).

You disclose that you reestimate cash flows expected to be collected for purchased credit impaired loans on a semiannual basis. Please tell us why you reestimate cash flows expected to be collected over the life of PCI loans on a semiannual basis as opposed to a quarterly basis.

In seeking to understand a registrant's disclosures, the CorpFin staff frequently will consider whether disclosures in MD&A are consistent with disclosures elsewhere in a filing and might request a registrant revise its disclosures to provide consistent information.

Example SEC comments:

Please tell us why there is a difference between the portion of the allowance for loan and lease losses attributable to loans individually evaluated for impairment in the total column on Page XX when compared to the total allowance for impaired loans on Page YY. Please also tell us why there is a difference between the portion of the loan and lease balance attributable to loans individually evaluated for impairment in the total column on Page XX and the loan balance of impaired loans disclosed on Page YY.

Please revise the amounts of total past-due loans presented in the total of past-due and nonaccrual loans in the aging analysis included in MD&A to be consistent with the amounts presented in the aging analysis in the footnotes.

Concentrations of credit risk

Registrants often provide GAAP-required disclosures,³ risk factor disclosures, and other disclosures related to concentrations of credit risk, including volumes of troubled debt restructurings (TDRs), within their loan portfolio. CorpFin often seeks additional or clarifying disclosure if the disclosure is unclear or the staff believes additional qualitative or quantitative disclosures are necessary to adequately inform investors.

Example SEC comments:

We note that the loan tables include the impacts of the COVID-19 customer assistance programs where applicable. In order for the reader to obtain a clear understanding of the impacts of the COVID-19 programs on the different types of loans affected, please revise future filings to address how these loans have been reflected in each of the tables. This can be done in separate tables or in footnote disclosures.

We note your tabular presentation includes accounts that have been excluded from the TDR designation due to regulatory exemptions, along with the corresponding number and dollar amount of accounts. Please tell us what consideration has been given to including information in future filings that provides the reader with expanded insight into the underlying credit quality of those customers that were excluded from the TDR designation due to regulatory exemptions. The following are examples of information that would enhance transparency and granularity of your tabular and textual disclosures.

- Quantify the number (or percentage) of those customers that have made a payment in the most recent payment cycle.
- Quantify the number (or percentage) of those customers that have made no payments since entering the program.
- Provide a distribution by most recent FICO score (for example, 660 and above, less than 660, or no scores).

³ See ASC 825-10-50-2.



Crowe practice note:

On July 14, 2021, the FASB tentatively decided to add a project to its agenda to address TDRs, which could affect future staff comments in this area.

We note that you classify certain loans as the XX program. Please clarify in future filings the basis for this classification, including customer and loan characteristics as well as distinct credit quality features.

Please revise this section and MD&A as appropriate in future filings to quantify the amount of loans at each period end presented that cause a concentration of credit risk (interest-only loans, no income verification loans, etc.) and to clearly describe the terms of the loans that cause the concentration. Refer to ASC 825-10-50-20 for guidance. Additionally, revise MD&A to discuss material trends in these loans and the impact on credit risk. In your response please provide a draft of your disclosure for the periods presented in the current Form 10-K.

Your risk factor disclosure indicates greater seasoning of your loan portfolio could increase the risk of credit defaults in the future. To better assess this risk, please expand to disclose the average age of loans in each major lending category or advise how it was determined not to include such disclosure.

Revenue recognition

Calendar year-end public business entities⁴ adopted ASC Topic 606 on Jan. 1, 2018. For the banking industry, Topic 606 was largely a scoping, documentation, and disclosure exercise with little impact on the recognition and measurement of revenue. However, CorpFin staff noted in various forums that the disclosure aspects of the standard would be an area of focus, and there continue to be new comments on this topic as CorpFin executes its rotational review program.

Example SEC comments:

Please tell us which streams of the company's revenue are within the scope of the new revenue standard and how you addressed the requirement in ASC 606-10-50-4 to disclose revenue recognized from contracts with customers separately from other sources of revenue.

Please revise future filings to include the disclosure requirements in ASC 606-10-50 in the Summary of Significant Accounting Policies and Notes to the Consolidated Financial Statements.

Given the significance of noninterest income to your operations, please revise future filings to include the disclosure requirements in ASC 606-10-50 in the Summary of Significant Accounting Policies and Notes to the Consolidated Financial Statements.

In your income statement on Page XX we note mortgage banking income of \$AA million for the year ended Sept. 30, 202X, which has increased significantly from \$BB million and \$CC million for the years ended Sept. 30, 201X and 201X, respectively, and is a major contributor to the increases in your operating results. It appears this line item includes several components including net realized and unrealized gains and losses on loans held for sale, changes in the fair value of derivatives, changes in the fair value of mortgage service rights, and a provision for loan repurchases and indemnifications, among others. Please provide us and revise future filings to include a disaggregation of this line item that includes the significant types and amounts of income, loss, or any contra items that make up this balance for the periods presented, considering also the guidance in Rule 9-04 of Regulation S-X.

⁴ See ASU 2013-12.

Income taxes

Income taxes historically have been and continue to be a CorpFin staff focus area because income taxes are material to most entities. In addition, income tax accounting under ASC Topic 740 is a complex area, particularly when an entity operates in multiple jurisdictions (for example, federal, state, or foreign) and is subject to differing risks, taxing regimes, and uncertainties. CorpFin issues comments when the disclosures included in the document are not transparent or do not appear to provide sufficient information in the footnotes or MD&A for an investor to understand the entity's tax situation.

Example SEC comments:

Please tell us why state income taxes net of the federal tax benefit resulted in a reduction in income tax expense in 20XX. Please also tell us if you paid or expect to pay any state income taxes in 20XX.

Please tell us about the nature of the income tax receivable true-ups of \$AA million and the return to provision adjustments of (\$BB) million in 20XX. Please also tell us the factors that resulted in the true-ups and adjustments in 20YY.

Net deferred tax assets decreased \$AA million in 20XX driven by the recognition of deferred tax liabilities of \$BB million related to deferred income and \$CC million of insurance premiums offset by an increase in deferred tax asset net operating losses of \$DD million and the recognition of \$EE million of tax credit carryovers. Additionally, you incurred excise taxes of \$FF million. Please tell us – and enhance future filings to disclose – what gave rise to these changes. Refer to ASC 740-10-50.

According to the disclosure, your 20XX income tax benefit from continuing operations was \$AA million, which was attributed largely to a \$BB million deferred income tax benefit as a result of an equity investment in a wholly owned subsidiary. Please address the following:

- Tell us the facts and circumstances related to the recognition and measurement of the deferred tax asset (\$CC million) and valuation allowance (\$DD million) attributable to this transaction, including specific accounting guidance supporting your treatment.
- Revise Management's Discussion and Analysis of Financial Condition and Results of Operations and the notes to your financial statements in future filings to provide additional details regarding this transaction. Please refer to Item 303 of Regulation S-K and ASC 740-10-50-14.

The table on Page XX indicates that you recognized a \$AA million deferred tax liability at Dec. 31, 20XX, compared to \$BB million at Dec. 31, 20YY, related to deferred real estate investment trust dividends and also that you recognized \$CC million of deferred federal tax expense for 20XX. Please tell us, in detail, all the facts and circumstances related to the recognition of this deferred tax liability. Please also revise your MD&A in future filings to discuss the nature of transactions resulting in the variability in reported amounts related to the deferred tax liability and any implications on future operating results and liquidity.

Please tell us the reasons for the change in the method of tax accounting for originated mortgage servicing rights, IRC Section 475 securities, deferred rent, and tenant improvement allowances for certain leases and how these changes resulted in the generation of operating losses and credit carryforwards for the 20XX tax year.

Cybersecurity

Financial institutions are increasingly subject to cyberattacks, which can be material to investors, and cybersecurity risk disclosures are a CorpFin focus area. In many cases, investors receive information about the risk of cyberattacks, or the potential impact or uncertainties of breaches that have already occurred, under Risk Factors,⁵ MD&A, or Legal Proceedings⁶ in nonfinancial statement disclosures, registration statements, and periodic filings. Disclosures also might appear in the financial statement footnotes when required under U.S. GAAP.⁷ CorpFin staff often asks registrants to clarify their disclosures about whether cyberbreaches have occurred in the past and the potential impact of such breaches.

Example SEC comment:

Please revise your disclosure to provide a description of any cyberincidents that you have experienced that are individually, or in the aggregate, material, including a description of the costs and other consequences, and to provide the investor with an idea of the likelihood that a risk might affect your results and the potential impact on your assets and earnings. Refer to CF Disclosure Guidance: Topic 2 and Regulation S-K Item 105.

Crowe practice note:

In February 2018, the SEC released interpretive guidance on cybersecurity disclosures, [“Commission Statement and Guidance on Public Company Cybersecurity Disclosures,”](#) that reiterates what was already included in CorpFin’s Disclosure Guidance: Topic No. 2 issued in 2011. The commission statement expands upon CorpFin’s existing guidance by emphasizing the need for disclosure controls and procedures-related material cybersecurity events and for insider trading policies in the context of nonpublic information about cyberevents. The guidance is for both companies that have experienced cyberattacks and those that have not yet been the target of a cyberattack.

The guidance includes the SEC’s views on cybersecurity risk and incident disclosure obligations under existing securities laws, including, for example, on Forms 10-K, 10-Q, and 8-K. As an SEC-approved interpretation, it implicitly raises the bar on the authoritative nature of the guidance.

In its spring 2021 regulatory flexibility agenda [update](#), the SEC included a potential rule proposal for cybersecurity risk governance.

⁵ See Item 105 of Regulation S-K.

⁶ See Item 103 of Regulation S-K.

⁷ See, for example, ASC 450.

Non-GAAP measures

Non-GAAP measures⁸ are a CorpFin focus. For entities that have adopted CECL, CorpFin typically will issue comments when a non-GAAP measure excludes some or all of the CECL provision. Individually tailored accounting principles (ITAP),⁹ prominence issues (for example, full non-GAAP income statements or presentation of the non-GAAP measure before the GAAP measure), and labeling or other compliance issues also often receive a comment.

Entities that have adopted CECL

CorpFin frequently comments on non-GAAP measures that exclude, in whole or in part, the CECL provision.



⁸ See Item 10(e) of Regulation S-K.

⁹ See Non-GAAP Financial Measures Compliance and Disclosure Interpretation Question 100.04 at <https://www.sec.gov/divisions/corpfin/guidance/nongapinterp.htm>

Example SEC comments:

We note that your disclosure of adjusted diluted earnings per share excludes provision for credit losses, a normal and recurring charge for your business. Please revise future filings to refrain from disclosing performance measures that exclude the provision for credit losses. See Question 100.01 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations.

We note your disclosures on pages XX-YY of various non-GAAP measures that are derived from adjusted net income calculated on Page XX, which exclude “Provision in excess of credit losses.” It appears these performance measures, which exclude a portion of the provision for credit losses, substitute individually tailored recognition and measurement methods for those of GAAP and violate Rule 100(b) of Regulation G. Refer to Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations, which is available on our website at <http://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>. Please refrain from disclosing these performance measures or any other similar non-GAAP performance measures that exclude all or a portion of the provision for credit losses.

We note that you disclose non-GAAP adjusted net income including the impact of additional provision for credit losses due to COVID-19. Please tell us how you were able to differentiate between changes in expected credit losses directly related to COVID-19 and credit losses attributable to other market factors and conditions, including how this adjustment is calculated. In addition, tell us how you plan to report this adjustment going forward as the impact from macroeconomic conditions due to COVID subsidies. Refer to Rule 100(b) of Regulation G, as discussed in Question 100.4 of the Non-GAAP Financial Measures Compliance and Disclosures Interpretations.

We note you present non-GAAP financial measurements in your periodic filings and your Form 8-K earnings release. For example, in your 202X 10-K, you exclude from Table XX earnings, as adjusted, and other ancillary non-GAAP presentations that follow on Pages XX through YY, \$AA million for provision for credit losses on loans due to the impacts of COVID-19. You also exclude \$BB million in unfunded commitments expense, which you state was due to an increase in the expected funding percentages for the company’s unfunded commitments as well as an increase in the unemployment rate projections from Jan. 1, 2020, to Dec. 31, 2020, due to COVID-19. It appears these performance measures, which exclude a portion of the provision for credit losses in addition to the unfunded commitments expense, substitute individually tailored recognition and measurement methods for those of GAAP and could violate Rule 100(b) of Regulation G. Refer to Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations, which is available on our website at <http://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>. Please refrain from disclosing these performance measures, or any other similar non-GAAP performance measures that exclude all or a portion of the provision for credit losses and any unfunded commitments expense using individually tailored recognition and measurement methods in future filings.

ITAP

CorpFin staff has explained that Regulation S-K allows for measures that exclude amounts from the most directly comparable GAAP measure, but the regulation does not contemplate changing the basis of accounting (for example, from up-front to ratable recognition or from straight line to nonstraight line). Changing the basis of accounting typically is an ITAP because the measure often does not reflect the economics of the transaction. In the banking industry, CorpFin staff frequently issues comments on measures that exclude purchase accounting adjustments (for example, nonaccretable yield). Several examples appear here, but the examples do not address all iterations of this type of comment.

Example SEC comments:

We note that you disclose non-GAAP adjusted net income excluding the impact of “qualitative factors adjustment” as a result of sustained favorable macroeconomic conditions. It appears that this adjustment represents a tailored accounting principal prohibited by Rule 100(b) of Regulation G, as discussed in Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosures Interpretations. Please remove this adjustment from future filings. Alternatively, tell us how you comply with the guidance.

We note the disclosure of the non-GAAP measure (allowance + discounts)/bank loans outstanding balance. The addition of purchase accounting adjustments to the ALLL to derive total valuation balances recorded against total loans appears to use an individually tailored recognition and measurement method, which could violate Rule 100(b) of Regulation G, since purchase accounting adjustments are not recognized in the ALLL under GAAP. In addition, this non-GAAP metric implies that purchase accounting adjustments are available to the total loan population, including nonacquired loans when they are available only for acquired loans. Please remove this non-GAAP measure from future filings. Refer to Question 100.04 of the Compliance & Disclosure Interpretations for guidance.

We note your disclosure of the following non-GAAP measures:

- Adjusted yield on average loans
- Adjusted yield on average assets
- Adjusted net interest margin

These measures exclude discount accretion on acquired loans. It appears that disclosing financial measures and metrics excluding the impact of purchase accounting represents an individually tailored recognition and measurement method, which could result in a misleading financial metric that violates Rule 100(b) of Regulation G. Please refer to Question 100.04 of the Compliance and Disclosure Interpretations for guidance.

We note your disclosure that you add credit discounts on loans purchased through acquisition to the allowance for loan losses to derive an allowance plus credit discount to total loans ratio that appears to use an individually tailored recognition and measurement method that could violate Rule 100 (b) of Regulation G. Please remove this non-GAAP financial measure in future filings. Please refer to Question 100.04 of the Compliance and Disclosure Interpretations for guidance.

You disclose a non-GAAP financial measure described as “Pretax pre-provision income.” Please tell us why the provision for loan losses is not a part of your core operations. For guidance, please refer to Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations and Item 10(e)(ii)(B) of Regulation S-K.

Crowe practice note:

Concluding whether a specific measure represents an ITAP can be challenging. Registrants that are considering the appropriateness of an existing or proposed non-GAAP financial measure are encouraged to consult with the CorpFin staff (for example, the CorpFin Office of the Chief Accountant or the review office to which the registrant is assigned – Office of Finance for most entities in the banking space).

Labeling

Notwithstanding the staff's reference in the previous comment related to core operations in the context of ITAP, CorpFin also questions measures that are labeled as "core" when such measures exclude amounts that appear to be integral to the entity's operations.

Example SEC comments:

We note you characterize the provision for loan losses related to the XX bankruptcy as nonoperating and you exclude the amount from your non-GAAP financial measure operating earnings and related non-GAAP financial metrics. Please change the name of this non-GAAP measure to more accurately reflect its content, eliminating the use of the word "operating." In this regard, credit risk and the management of credit risk related to customer bankruptcies, including potential fraud, appear to be part of the typical operating functions of a lending institution. Alternatively, do not exclude the provision for loan losses from your operating earnings non-GAAP measure.

We note you present the non-GAAP measure, pretax, pre-provision core net income, along with similar related metrics (for example, core return on average assets pretax, pre-provision, and core return on common equity pretax, pre-provision, on Pages XX and YY, respectively). Please revise your future filings to change the name of this non-GAAP measure and related metrics to more accurately reflect their content. In this regard, the use of the word "core" implies you are referring to your most central or essential operations and results. Removal of the provision for loan losses from net income to arrive at pretax, pre-provision core net income implies that credit losses are not an inherent part of your core operations. Thus, we believe it would be appropriate to use a more descriptive title to describe this non-GAAP measure, perhaps eliminating the use of the word "core" in its entirety from this specific measure and related metrics.

CorpFin staff also often questions measures labeled "pro forma" when such amounts do not reflect the full pro forma adjustments required under SEC rules.¹⁰

Example SEC comments:

We note that you have titled several of your non-GAAP measures "pro forma." It does not appear that information in the filing is pro forma financial information based on the guidance in Article 11 of Regulation S-X. If true, please revise your presentation to more clearly present your non-GAAP measures eliminating the use of the words "pro forma."

¹⁰ See Article 11 of Regulation S-X.

¹¹ See Footnote 8 and Section 8100 of the CorpFin Financial Reporting Manual.

Other compliance issues

SEC rules typically require that certain disclosures (for example, reconciliation to the most directly comparable GAAP measure or disclosure of how management uses the measure) accompany non-GAAP financial measures, and CorpFin interpretive guidance prohibits certain non-GAAP presentations (for example, a full non-GAAP income statement).

Example SEC comments:

We note that you added certain non-GAAP financial measures in the June 30, 20XX, 10-Q for the first time. Please tell us the following concerning these non-GAAP financial measures:

- How you meet the criteria in Item 10(e)(i)(B) of Regulation S-K regarding a reconciliation of the most directly comparable GAAP financial measures to the non-GAAP financial measures
- Why you consider these non-GAAP financial measures useful to investors under Item 10(e)(i)(C) of Regulation S-K

Please revise to present a reconciliation for your non-GAAP measures “tangible book value per share,” “tangible equity to tangible assets,” and “efficiency ratio” to clearly disclose the most directly comparable GAAP measures (that is, book value per share, total common stockholders’ equity to total assets, and the GAAP efficiency ratio) reconciled to the non-GAAP measures. Please refer to Item 10(e)(1)(i)(B) of Regulation S-K for guidance.

We note your presentation of “return on assets-adjusted,” “return on equity-adjusted,” “efficiency ratio-adjusted,” “tangible equity to tangible assets,” and “tangible book value per common share” on Page XX. These measures appear to be non-GAAP measures as defined by Regulation G and Item 10(e) of Regulation S-K as they are not required by GAAP, SEC rules, or banking regulatory requirements. To the extent you provide non-GAAP financial measures in future filings, please disclose the information required in Item 10(e) of Regulation S-K.

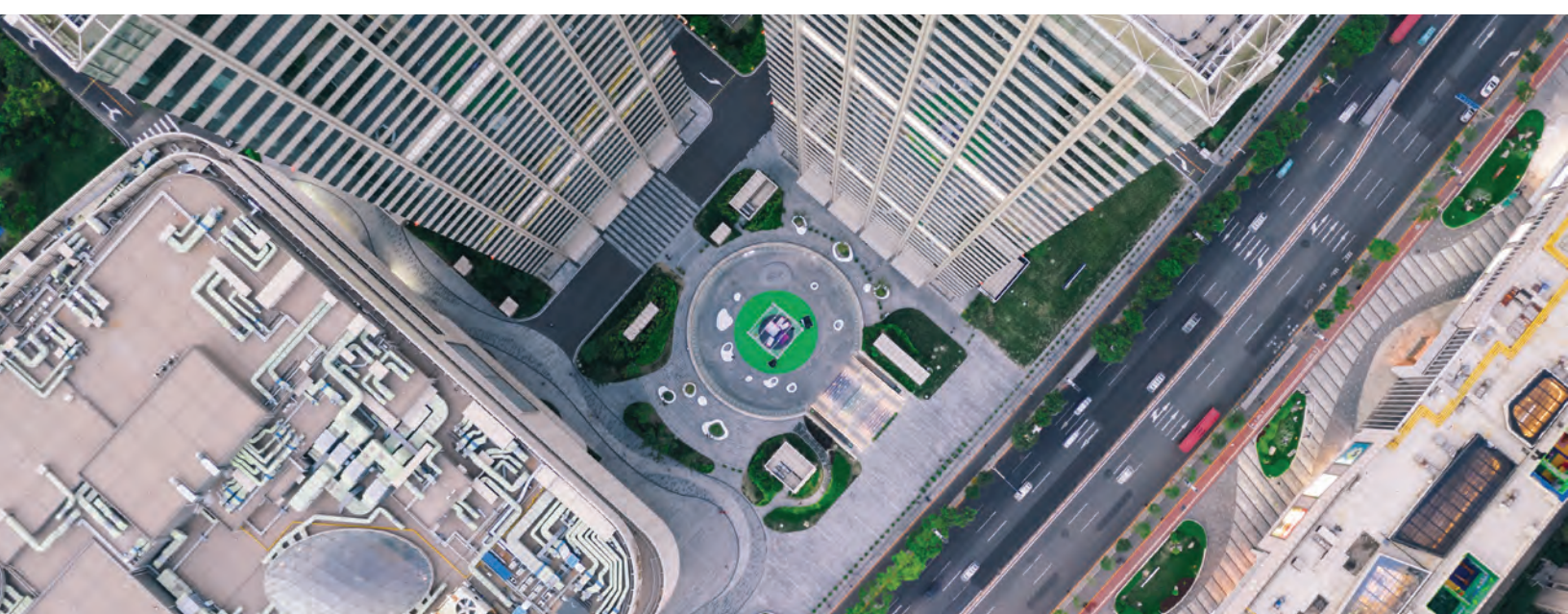
Please revise your future filings to eliminate the presentation of a full income statement of non-GAAP measures. We reference Compliance and Disclosure Interpretation Question 102.10 on non-GAAP financial measures.

Crowe practice note:

Which specific SEC rules and regulations or staff interpretive guidance¹¹ apply to the disclosure of additional information depends on whether the non-GAAP financial measure is presented in a filing or furnished in a Form 8-K (for example, in an earnings release).

Emerging growth companies

Entities that qualify as emerging growth companies (EGCs)¹² receive certain accommodations when filing registration statements and periodic filings. For example, EGCs can elect to adopt accounting standards using the effective date for nonpublic business entities and are exempt from Section 404(b) of the *Sarbanes-Oxley Act* (that is, the auditor attestation on internal control over financial reporting) until the entity is no longer an EGC (for example, until it becomes a large accelerated filer or five years have passed since the initial sale of securities). The most frequent EGC-related comments in the banking sector relate to the date on which the entity will adopt new accounting standards, including CECL. If an EGC loses its status, it directly affects the date of adoption of new accounting standards. SEC interpretive guidance indicates entities should disclose both the quantitative and qualitative impacts of recently issued accounting standards the entity has not yet adopted.¹³



¹² Refer to the Jumpstart Our Business Startups Act of 2012 or <https://www.sec.gov/spotlight/jobs-act.shtml> for additional information.

¹³ See SAB Topic 11M at <https://www.sec.gov/interps/account/sabcodet11.htm#M>

Example SEC comment:

You state that the company plans to adopt ASU 2016-13, “Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments,” commonly referred to as CECL, on Jan. 1, 2023. We also note that you state you will cease being an emerging growth company as of the end of 2022 given your 2017 initial public offering of common stock. Given that you will cease to be an EGC as of Dec. 31, 2022, and you have never been a smaller reporting company, you are required to adopt Topic 326 in your Dec. 31, 2022, Form 10-K, and not as of Jan. 1, 2023. Please revise your disclosures in future filings and plan accordingly.

We note references on Page XX to your status as an emerging growth company and disclosure on Page YY related to your planned adoption dates of new or revised accounting standards. Please tell us and revise future filings to explain how you currently qualify as an emerging growth company. Please refer to Question 40 of the *Jumpstart Our Business Startups Act* Frequently Asked Questions available at <https://www.sec.gov/divisions/corpin/guidance/cfjjobsactfaq-title-i-general.htm>.

Please refer to Staff Accounting Bulletin (SAB) Topic 11M and expand the disclosure related to financial instruments, leases, and the allowance for credit losses to state the date on which adoption is required and the date on which you plan to adopt the recently issued accounting standards.

Crowe practice note:

Staff interpretive guidance specific to EGCs indicates entities that have elected deferred effective dates should disclose both the date on which the accounting standard is effective for non-EGCs and the date on which the entity will adopt the standard, assuming it remains an EGC.¹⁴

¹⁴ See Question 14 at <https://www.sec.gov/divisions/corpin/guidance/cfjjobsactfaq-title-i-general.htm>

Initial registration statements

Certain types of staff comments occur with relatively more frequency in initial registration statements because it is the first time CorpFin staff has reviewed the registrant's disclosures. In addition, the form requirements include certain disclosures that typically are not applicable to periodic filings once the registrant becomes a reporting company.

Example SEC comments:

Business description

Please revise the disclosure on pursuing acquisitions to clarify if there are any plans, arrangements, or understandings to make any acquisitions.

Please balance the description of your business, strategies, and strengths with equally prominent disclosure of the challenges you face and the risks and limitations that could harm your business. For example, and without limitation, please balance your discussion with a discussion of the risks outlined in your risk factor related to financial, execution, compliance, and operational risks of your acquisition strategy; the risk factor relating to the dependence of your financial performance on your growth strategy; the risk factor on the risks of AA% of your loan portfolio being comprised of real estate loans and the risk of commercial loans having a higher degree of risk; and the risk factor regarding the unseasoned nature of your loans.

Risk factors

We note that your summary includes a discussion of your competitive strengths and banking strategy. Please balance this disclosure by including a brief summary of the most significant risks that your business faces in this section of your prospectus.

Use of proceeds

You disclose that you plan to use the proceeds of this offering to repay indebtedness. Please revise to disclose the maturity of the debt that you intend to repay. Refer to Instruction 4 of Item 504 of Regulation S-K for additional guidance.

Please disclose whether the intended use of proceeds includes investing additional capital in the bank. If so, disclose the amount.

We note your disclosure that the redemption of your Small Business Lending Fund preferred stock is subject to the prior approval of the Federal Reserve. Please disclose the status of this approval and, if material, your intended uses of proceeds if approval cannot be obtained in a timely fashion or at all.

We note the disclosure that proceeds may be used “to fund potential future acquisitions of bank and nonbank financial services companies that we believe are complementary to our business and consistent with our growth strategy.” If your future acquisition strategy will differ from the past strategy, please give a brief description of your post-offering acquisition strategy here and elsewhere in your filing, including the types of opportunities you intend to explore, or clarify that management has not yet determined a particular strategy.

Director and officer information

Please revise your directors’ biographies to clearly identify the time periods associated with their business experience over the past five years. Refer to Item 401(e) of Regulation S-K for guidance.

Forum selection provision for litigation

We note that the forum selection provision in your Articles of Organization states that unless you consent in writing, the sole and exclusive forum for certain litigation, including “any derivative action” shall be XX or, if no state court has subject-matter jurisdiction, YY. Please revise your disclosure to discuss whether your forum selection provision applies to actions arising under the *Exchange Act*. In that regard, we note that Section 27 of the *Exchange Act* creates exclusive federal jurisdiction over all suits brought to enforce any duty or liability created by the *Exchange Act* or the rules and regulations thereunder. If the provision does not apply to actions arising under the *Exchange Act*, please ensure that the exclusive forum provision in your Articles of Organization states this clearly, or tell us how you will inform investors in future filings that the provision does not apply to any actions arising under the *Exchange Act*.

Mutual conversions

The aggregate purchase price of the common stock issued in a mutual conversion offering is based on the independently appraised pro forma market value of the common stock, as required by federal regulations and the typical plan of conversion. CorpFin often will issue comments if there appears to be comparability issues between the registrant and the peer group companies selected for the independent valuation. CorpFin also will issue comments if the discussion of the conversion process and timing is not clear.

Example SEC comments:

We note that there appears to be a significant variation in asset size among the peer group companies as compared to each other and as compared to XYZ Bancorp, as referenced in the table on Page XX. Please revise to explain in greater detail how your independent third-party valuation firm concluded that these companies could be considered XYZ Bancorp's "peers" and therefore used in determining its appraised value.

Please expand your discussion of XX, Inc.'s formation to include a discussion of the timing of the Conversion, including the operative terms of the Plan of Conversion and when each step will occur relative to the offering. We note that the Plan of Conversion will be filed by amendment. Please note that we may have comments on the Plan and that you should allow adequate time for the staff to review the exhibit.



Other topics

LIBOR transition

CorpFin typically asks for additional quantitative and qualitative disclosure of LIBOR transition risk when the potential impact to the registrant might be material.

Example SEC comments:

You disclose that commercial loans bear interest rates that float with the prime rate, LIBOR, or another established index. Please disclose in future filings your LIBOR exposure and the potential impact to your financial statements from the expected discontinuation of LIBOR. Please also include a risk factor concerning your LIBOR exposure, as appropriate.

Crowe practice note:

CorpFin views on appropriate LIBOR transition risk disclosures are included in the SEC's December 2019 staff statement on LIBOR transition.¹⁵

Errors and internal control deficiencies

CorpFin often requests additional information, including analyses of financial statement materiality and the severity of identified control deficiencies, related to disclosure of errors in previously issued financial statements.

Example SEC comments:

Please revise your filings to correct this error, or provide a materiality analysis to support your conclusion that the impact of the error is not material.

¹⁵ <https://www.sec.gov/news/public-statement/libor-transition>

Please provide us with your internal control over financial reporting and disclosure controls and procedures assessment in relation to this accounting error. Please ensure your response addresses the following:

- Explain the timing of the decision to make a change in accounting principle and the controls in place over such change, including controls over assessing the materiality and when to record the change.
- Please describe the control deficiencies, in reasonable detail, that led to the incorrect accounting for the change, and how you evaluated the severity of each identified control failure for each period it existed. Refer to the guidance for evaluation of control deficiencies beginning on Page 34 of SEC Release No. 33-8810, “Commission Guidance Regarding Management’s Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934.” Include in your analysis a description of the maximum potential amount or total amount of transactions exposed to the deficiency, and explain how you made that determination.
- Tell us whether you evaluated if there were any deficiencies in your control environment, monitoring, information and communication, or risk assessment controls and processes as a result of the accounting error and, if so, how you evaluated the severity of those deficiencies.
- Tell us of any changes or improvements in your internal controls over financial reporting you plan to make as a result of this accounting error including the timing of such changes.

ESG matters

A February 2021 statement¹⁶ from then acting SEC Chair Allison Herren Lee directed CorpFin staff to enhance review focus on climate-related disclosure provided pursuant to 2010 SEC guidance,¹⁷ and recent SEC final rules¹⁸ have prompted other ESG-related disclosures. Each might prompt future CorpFin comment on this theme.

Crowe practice note:

CorpFin ESG comments for banking registrants are not yet publicly available, and we expect CorpFin ESG comments will evolve. CorpFin ESG comments for banking registrants could include, for example, a request to enhance environmental-related risk factor disclosure pursuant to the 2010 SEC guidance on climate change.

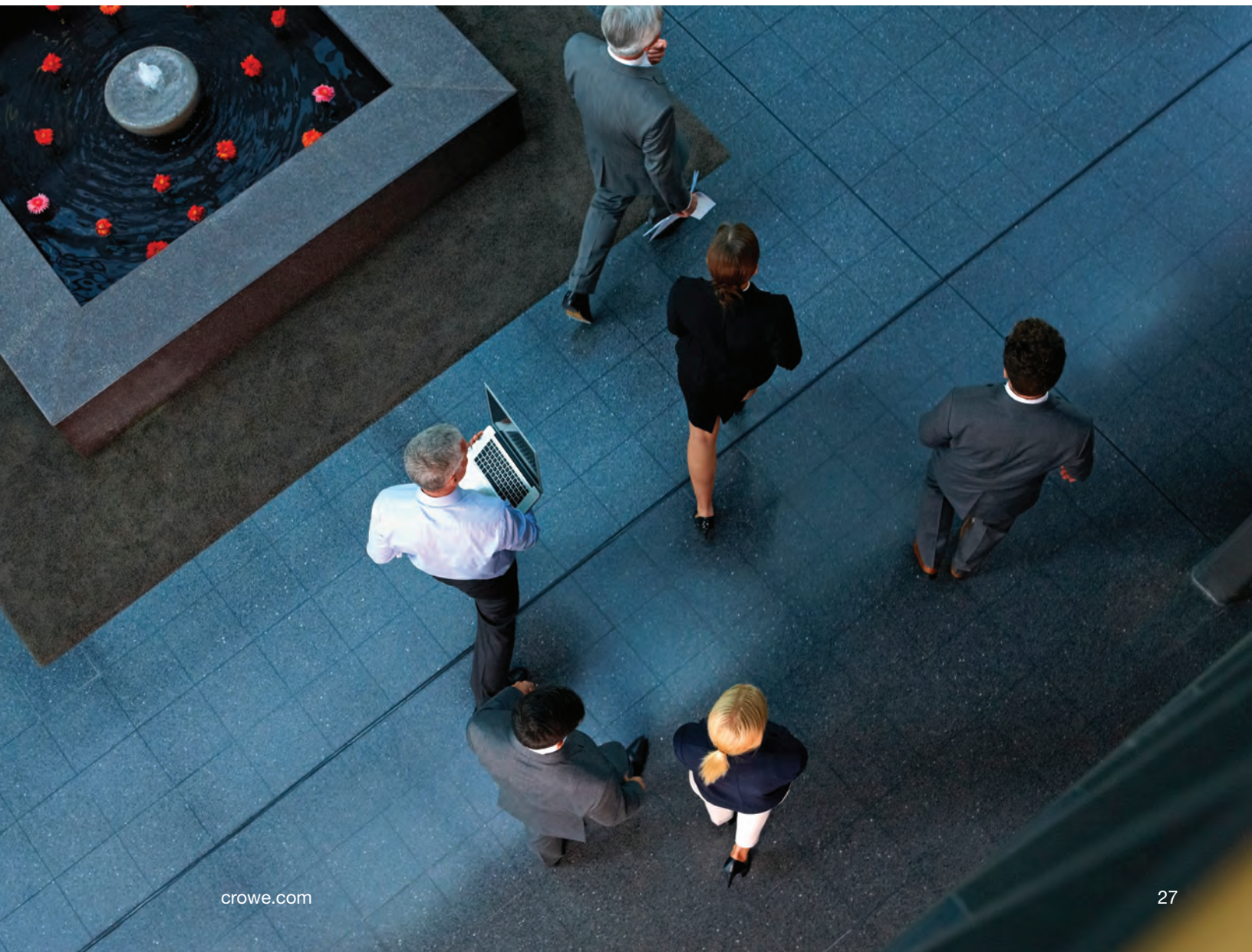
¹⁶ <https://www.sec.gov/news/public-statement/lee-statement-review-climate-related-disclosure>

¹⁷ <https://www.sec.gov/rules/interp/2010/33-9106.pdf>

¹⁸ For example, <https://www.sec.gov/rules/final/2020/33-10825.pdf>

Final thoughts

The SEC comments in this publication are not the complete population of all recent comments issued in the banking sector; however, they are representative of the types of comments that CorpFin staff issued. The focus of the SEC staff and the comments issued continually evolve, and Crowe will endeavor to keep you informed of new significant trends.





Learn more

Mark Shannon
Partner
+1 202 779 9921
mark.shannon@crowe.com

Dana Ashby
+1 502 420 4427
dana.ashby@crowe.com

crowe.com

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