

SEC Fines ADT Inc. \$100k for Non-GAAP Disclosure in Earnings Releases

January 9, 2019 – Governance & Compliance Insider
by Brian Burke

On December 26, 2018, the SEC filed a cease-and-desist order and fined ADT Inc. (“ADT”) \$100,000 for its use of non-GAAP financial measures without giving equal or greater prominence to the comparable GAAP financial measures. The order serves as a reminder of the importance of the SEC’s “equal or greater prominence” rule when disclosing non-GAAP financial measures, even when comparable GAAP financial measures are also disclosed.

Item 10(e)(1)(i)(A) of Regulation S-K states that when a registrant uses a non-GAAP financial measure in an SEC filing, the registrant must also present “with equal or greater prominence, ... the most directly comparable financial measure or measures calculated and presented in accordance with Generally Accepted Accounting Principles (GAAP).” The requirements of Item 10(e)(1)(i)(A) are applicable to, among other filings, registration statements, quarterly and annual reports, proxy statements, as well as earnings releases.

In the headline of ADT’s earnings release for the fourth quarter and full year 2017 ADT stated that adjusted EBITDA, a non-GAAP financial measure, was up 8% year-over-year. However, in violation of Item 10(e)(1)(i)(A), ADT did not also provide the comparable GAAP financial measure (net income or loss) in the headline.

In ADT’s first quarter 2018 earnings release, it again presented non-GAAP measures in the headline and summary bullets without disclosure of the most directly comparable GAAP measures. In the headline of the release, ADT stated that adjusted EBITDA was up 7% year-over-year. Furthermore, in bullet points included at the top of the release under the heading “FIRST QUARTER 2018 HIGHLIGHTS,” ADT stated that its adjusted EBITDA of \$620 million was up 7%, adjusted net income of \$249 million was up 26%, and adjusted net income per share of \$0.34 was up 10%. However, it wasn’t until the second and sixth full paragraphs of the release that ADT disclosed that its GAAP net loss had increased from \$141 million for the first quarter of 2017 to \$157 million for the first quarter of 2018, which is a significant difference from the non-GAAP results in the

Related People

- Brian Burke

Related Capabilities

- Corporate Governance & Compliance
- Mergers & Acquisitions
- Government Enforcement & Corporate Investigations

headline and summary bullets.

As a result of these violations, ADT and the SEC agreed to a cease-and-desist order and an accompanying penalty of \$100,000.

The full text of the SEC's cease-and-desist order is available here:
[sec.gov/litigation/admin/2018/34-84956.pdf](https://www.sec.gov/litigation/admin/2018/34-84956.pdf).