

## [Securities Regulation Daily Wrap Up, ACCOUNTING AND AUDITING— SEC settles with company and officers over manipulation of non-GAAP metrics, \(Aug. 2, 2019\)](#)

Securities Regulation Daily Wrap Up

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By Gregory Kane, J.D., M.B.A.

SEC says REIT and certain of its officers manipulated non-GAAP metrics to falsely show that the company was meeting its financial performance targets.

The SEC reached a settlement agreement with a real estate investment trust and two of its former senior executives over allegations of fraud in a scheme to manipulate non-GAAP performance metrics used to show financial performance. The company will pay a \$7 million penalty without admitting or denying allegations, while two of the officers have agreed to partial judgments against them (*In the Matter of Brixmor Property Group Inc.*, [Release No. 34-86538](#), August 1, 2019).

**Brixmor.** Brixmor Property Group Inc. is a publicly-traded real estate investment trust that operates open-air shopping centers. The SEC charged the company and four of its former officers for manipulating and falsely reporting its Same Property Net Operating Income Growth Rate, a non-GAAP measurement that investors and analysts used to assess financial performance from the third quarter of 2013 through the third quarter of 2015.

The growth rate was volatile and unpredictable, but by ignoring established accounting principles the officers were able to claim that the company was meeting its financial performance goals. The SEC filed a [complaint](#) against the former officers in the U.S. District Court for the Southern District of New York, alleging violations of the antifraud and books and record provisions of the Securities Exchange Act as well as violations of Rule 100(b) of Regulation G dealing with reporting of non-GAAP performance measures. The complaint sought permanent injunctions, disgorgement and officers-and-directors bars.

**Settlement.** Without admitting or denying the allegations, the company agreed to pay a \$7 million penalty and comply with certain requirements, including retaining an independent consultant to review and assess its internal controls relating to non-GAAP measures. Two of the officers also agreed, subject to court approval, to the entry of partial judgments against them, including consenting to injunctive relief, monetary relief and bars to be determined by the court.

"A company that chooses to publicly present non-GAAP financial measures must do so truthfully," said Marc P. Berger, Director of the SEC's New York Regional Office in an SEC [press release](#) on the matter.

In a parallel action, the U.S. Attorney's Office for the Southern District of New York is pursuing criminal charges against the four officers. The two who have agreed to partial judgment against themselves with the SEC have already guilty to the criminal charges.

The release is [No. 34-86538](#).

Companies: Brixmor Property Group Inc.

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