



SEC comment letters in the insurance industry: 2023 edition



Introduction

Welcome to our inaugural edition of “SEC Comment Letters in the Insurance Industry.” Insurance companies have had no shortage of risks to face in 2023, and whether the cause is catastrophe losses, interest-rate changes, market disruptions, or inflation, the Division of Corporation Finance (CorpFin) of the Securities and Exchange Commission (SEC) is looking for disclosures that evolve to address these risks. The *Sarbanes-Oxley Act of 2002* mandates CorpFin staff review registrant filings, including under both the *Securities Act* and the *Exchange Act*, at least once every three years. Each review might or might not result in a comment letter.

This report identifies themes from recent SEC comment letters for insurance industry registrants, and each section includes example SEC comments. We focus on insurance-specific topics, but we have also included sections for topics of frequent staff comment regardless of industry (for example, corporate governance and non-GAAP).

We hope that you find this publication useful as you consider how best to inform investors in your future filings.



Loss reserves and liabilities for future policy benefits

Loss reserves and liabilities for future policy benefits are often the most significant estimate included in an insurance entity's financial statements. CorpFin often requests enhanced disclosures related to critical accounting estimates,¹ including actuarial assumptions and methodologies, and U.S. GAAP required disclosures² when the staff believes investors could be better informed about a reporting entity's insurance liabilities, including the nature, amount, timing, and uncertainty of cash flows and the effect of those cash flows on the entity's results.

Example SEC comments:

In order to show investors the potential variability in the most recent estimate of your loss reserve, quantify and present (preferably in a tabular format) the impact that reasonably likely changes in the key assumptions you have identified might have on reported results, financial position, and liquidity. Explain why you believe the scenarios quantified are reasonably likely.

Please tell us why you removed your disclosure about the range of actuarial estimates related to your latest loss reserve estimate. In your response, tell us how your current disclosure provides readers with information to assess the variability and sensitivity of your loss reserve estimate to reasonably likely changes in the key underlying reserving assumptions.

We note your disclosures here and elsewhere regarding estimation of reserves for unpaid losses and loss adjustment expenses (LAE). Please enhance your disclosures to provide a more fulsome and detailed discussion of your methodologies used; for example, if multiple actuarial methods are used, provide context as to which methods may be used and when. If methodologies have changed over the periods covered, discuss the impact of such changes. Refer to Accounting Standards Codification (ASC) 944-40-50-1, ASC 944-40-50-4F, ASC 944-40-50-4I, and Section 2A3 of Industry Guide 6.³

We note your disclosure regarding the differing typical durations of property damage settlements and personal liability and injury claims settlements. Please revise to disaggregate these in your claims development tables, or tell us how you concluded that disaggregation was not necessary. Refer to ASC 944-40-50-4H.

We note your disclosure that your favorable prior-year development resulted from reestimation of unpaid losses and LAE. Please revise your disclosures to provide some more granularity regarding the drivers for this change.

We note your 10-year table disclosure of incurred loss and LAE, net of reinsurance. Please revise to show the cumulative best estimate at the end of each year in the columns, consistent with the example in ASC 944-40-55-9E.

¹ See Item 303(b)(3) of Regulation S-K.

² For example, see ASC 944-10-50-1 through 4 and 944-40-50-4A through I.

³ <https://www.sec.gov/files/industryguides.pdf>

Please revise your disclosures to include a reconciliation of your 10-year table(s) to your balance sheet liability. See ASC 944-40-50-4C.

You disclose material unfavorable prior-year development on incurred claims. Please tell us how your disclosure provides useful information to financial statement users to facilitate their analysis of the amount, timing, and uncertainty of cash flows arising from insurance contracts and the development of the liability for unpaid claims consistent with the objective outlined in paragraph BC 2 of Accounting Standards Update (ASU) 2015-09. In your response tell us:

- How your disclosure complies with the guidance in ASC 944-40-50-3. In this regard, your disclosure appears to merely identify prior-year development but fails to explain the underlying reasons for this development.
- The components of your unfavorable development over and above the apparent \$XX million in aggregate unfavorable development depicted in your claims development tables. At a minimum, provide the following components for the apparent \$YY million in incremental unfavorable development:
 - The amount of prior-year development for accident years prior to 20XX for each of the claims development tables referred to above
 - The short-duration lines of business not included in the claims development tables and the prior-year development for those lines in 2019 for each line
 - The amount of prior-year development related to your long-duration claims
- Why you do not include the short-duration lines of business identified in the preceding bullet in your tables.
- Whether the prior-year development on your long-duration claims is offset by an opposite impact on your liability for future policy benefits.
- Your consideration for disclosing the information in the preceding bullets.

CROWE PRACTICE NOTE

ASU 2018-12, "Targeted Improvements to the Accounting for Long-Duration Contracts," changes certain aspects of accounting for long-duration contracts and seeks to improve the effectiveness of disclosures. Many registrants adopted ASU 2018-12 on Jan. 1, 2023, and we expect CorpFin staff will focus on all aspects of the standard including disclosure of significant inputs, judgments, assumptions, and methods used in measurement of long-duration contracts.

We note your disclosure of the impacts of severe weather events in the past three fiscal years and the significant increase to the net loss ratio as a result of the severe weather events. We also note the disclosure that "the occurrence of claims from catastrophic events can result in substantial volatility in our results of operations or financial condition for any fiscal quarter or years" and "all states in which we write homeowners policies, experienced several significant hurricanes in [the past three fiscal years]." Given the magnitude of catastrophe losses to your underwriting results, please provide us proposed revised disclosure, both at the aggregate insurance level and at the individual component businesses you disclose, to be included in future filings that:

- Clearly discloses the amount of total catastrophe losses recorded
- Separately discloses the amounts recorded for each significant catastrophe
- Indicates how you identify an individual catastrophe as being significant
- Separately discusses any significant prior-period loss development

Reinsurance

The use of reinsurance allows an insurance entity to spread risk, grow its business, or efficiently use capital. In addition, reinsurance can have a material impact on an insurance entity's financial position, results of operations, and liquidity. CorpFin often requests additional business,⁴ management's discussion and analysis (MD&A), or financial statement disclosures to allow investors to better understand an entity's reinsurance programs and how the use of reinsurance affects the entity. In certain cases, CorpFin might ask a registrant whether a reinsurance agreement should be filed as a material contract.⁵

Example SEC comments:

In future filings, please ensure your MD&A clearly discusses:

- Your reinsurance strategy implemented in the current and recent periods presented
- Any changes in your strategy during these periods
- If material, its impact on current and future financial results, metrics, and trends

You state here that your revenue and gross profit are significantly affected by your reinsurance program. As such, please provide a separate subsection in which you describe the material features and terms of your reinsurance program. Please quantify the number of reinsurance agreements you currently have, identify any material reinsurers, and discuss the material terms of your reinsurance agreements.

Please revise future filings to discuss the magnitude of each type of reinsurance used (that is, quota share and catastrophe excess of loss), including the impact of each type on your financial results.

We note your disclosure that if A.M. Best downgrades or withdraws either of your ratings, you could be severely limited or prevented from writing any new reinsurance contracts. We also note your disclosure that certain of your assumed reinsurance contracts contain provisions that permit your clients to cancel the contract or require additional collateral in the event of a downgrade in your A.M. Best ratings below specified levels or a reduction of your capital or surplus below specified levels over the course of the agreement. Please revise future filings to quantify the amount of revenue and other relevant metrics related to contracts that are subject to cancellation and discuss the impact on revenue and other relevant metrics of contracts canceled separately from other types of adjustments (for example, novation or commutation), providing appropriate facts and circumstances to fully understand the cancellation or adjustment if material. Please also revise future filings to quantify the potential incremental collateral requirements. Please provide us your proposed disclosure.

⁴ See Item 101 of Regulation S-K.

⁵ See item 601(b)(10) of Regulation S-K.

We note your disclosure that upon the occurrence of certain triggers under applicable reinsurance agreements, your subsidiaries may elect or may be required to recapture the business ceded under such reinsurance agreements, which would result in a substantial increase to your net insurance liabilities. Please revise future filings to discuss the nature of the triggers and provide additional information regarding the triggers to allow an investor to fully understand the uncertainty, the likelihood of a trigger occurring, and the reasonably likely impact on financial condition, results of operations, liquidity, or capital resources.

You state that your hypothetical net loss in the event of a historically significant catastrophe such as the 1906 San Francisco or the 1994 Northridge earthquake would be capped. Please clarify to the extent true that you remain ultimately liable for your policies in the event that the reinsurers are unable to pay any claims, and that the amount of reinsurance you are able to obtain may change from time to time. Additionally, if you also have exposure from your earthquake policies for attritional losses arising from fire damage, please disclose this fact.

Please revise your presentation to include only amounts due from reinsurers for paid and unpaid claims and claim adjustment expenses in your reinsurance recoverable asset consistent with the guidance in ASC 944-310-25-2 and the definition of reinsurance recoverables in ASC 944-20-20. In addition, tell us whether you have any prepaid reinsurance premiums and report them separately as required by ASC 944-340-25-1. Alternatively, revise the caption on the face of your balance sheet and provide disclosure of the components in your footnotes.

Noting the three-year reinsurance commitment for 20% of your capacity from an “established provider,” please identify any material reinsurers and discuss the material terms of your reinsurance agreements. If applicable, please also file the same as exhibits to the registration statement. Refer to Item 601(b)(10) of Regulation S-K.



Credit risk concentration

Registrants often provide disclosures required under GAAP,⁶ risk factors,⁷ MD&A,⁸ and other disclosures related to concentrations of credit risk (for example, from reinsurance counterparties, within the investment portfolio). CorpFin seeks additional or clarifying disclosure if the disclosure is unclear or the staff believes additional quantitative or qualitative disclosures are necessary to adequately inform investors.

Example SEC comments:

Please revise future filings to present an aging analysis for your reinsurance recoverables and disclose when you consider an amount past due. Refer to ASC 326-20-50-14 for guidance. To the extent a significant amount of receivables are past due, please revise MD&A to discuss payment practices and trends and to discuss the impact on your liquidity and financial results.

Please revise, here or elsewhere as appropriate, to identify your significant reinsurers and their respective ratings.

In your risk factors, you identify the energy, retail, travel, entertainment, and real estate industries as potential concentrations. You also indicate that your municipal bond portfolio is subject to risks of default by state and local governments and agencies that are under increased strain. Finally, you disclose that significant financial market disruptions might have a material impact on your business, results of operations, and financial condition. Please tell us the following:

- Your current investment portfolio exposure to each of the industries identified above
- Your consideration for disclosing in your upcoming Form 10-K the concentration information in your investment portfolio for these industries and your municipal bond portfolio as stipulated in ASC 825-10-50-20 and 50-21
- If your investment portfolio concentrations do not meet the disclosure threshold in the guidance identified in the preceding bullet, your consideration for otherwise disclosing in MD&A in your upcoming Form 10-K more information about the composition of your investment portfolio so that investors can better assess the underlying risks given the significant financial market disruptions you identify

You disclose that you do not have exposure to any credit concentration risk of a single issuer greater than 10% of your stockholders' equity, other than certain U.S. government agencies. Please tell us whether you have exposure to any significant industry sector concentrations in your corporate securities and overall investment portfolios and your consideration for disclosing the information required by ASC 825-10-50-21.

⁶ See ASC 825-10-50-20 and 21.

⁷ See Item 105 of Regulation S-K.

⁸ See Item 303 of Regulation S-K.

Revenue recognition

Insurance brokers or agents often have material revenue streams within the scope of ASC 606. CorpFin often comments when the entity's disclosures might need revision to provide further information to investors about significant judgments applied (for example, constrained variable consideration) or when the disclosures do not appear to comply with ASC 606.

Example SEC comments:

Please tell us your consideration for disclosing the significant judgments in estimating the total lifetime commissions. In this respect, please tell us the time periods considered for each plan type and the specific constraints you consider in determining the percentages you disclose. Refer to ASC 606-10-50-1b.

Please revise your disclosure to specifically provide the amount of revenue recognized in the reporting period that was included in your deferred revenue balance at the beginning of each period as required by ASC 606-10-50-8b.

Please address the following and reference for us, where appropriate, the authoritative literature you rely upon to support your position:

- Tell us separately how much of the contract asset balance at the balance sheet date relates to expected commission to be received on short-term products sold versus long-term products sold
- Of the amounts identified in the preceding bullet, tell us how much of each amount represents:
 - Anticipated commission to be collected for monthly premiums within the current policy year
 - Anticipated commission to be collected for monthly or annual premiums in succeeding policy years
 - The average length of time represented by the estimated commission in the preceding two sub-bullets
 - Anticipated performance bonuses on long-term products sold
- Tell us why it is appropriate to recognize in the current year the commissions identified in the preceding bullets for policy years extending beyond the current policy year. In your response tell us the renewal terms of these policies, including:
 - Whether they automatically renew or whether they must be re-underwritten
 - Whether you are either explicitly obligated to resell or otherwise participate in the renewal process or you are required to do so by law or expected/implied to do so by customary business practices



Please revise your disclosure to provide the change in estimated commissions to be received that represents the adjustment of transaction price for performance obligations delivered in prior periods as stipulated in ASC 606-10-50-10b and 50-12A.

You disclose that certain of your contracts with insurance companies include a promise to provide certain services to the insurance company, such as information gathering, payment collection, and policyholder inquiries handling. You also disclose that you determined these services to be immaterial in the context of the contract and that you accrue the costs of providing these services at the effective date of the policy. Please address the following (referencing where appropriate the authoritative literature you rely upon to support your conclusion):

- Provide us your analysis supporting your conclusion that these services are immaterial in the context of the contract. In your response, tell us the time period over which you are obligated to provide each of these services for each significant type of policy sold.
- Tell us the time period over which you accrued these costs for each service and type of policy sold and how that compares to the time period of your obligation identified in the first bullet above.

Risk and governance matters

CorpFin staff comment when corporate governance proxy statement disclosures⁹ might be better tailored to address how the registrant's board structure and risk oversight address the unique circumstances and challenges of the registrant's business, which is information investors need to make informed voting and investment decisions.

CROWE PRACTICE NOTE

The Crowe article "[SEC Focuses on Item 407 Board Governance Disclosure](#)" provides further insights into CorpFin's focus on board risk disclosures.

Example SEC comments:

Please expand upon the role that your lead independent director plays in the leadership of the board. For example, please enhance your disclosure to address whether or not your lead independent director may:

- Represent the board in communications with shareholders and other stakeholders
- Require board consideration of, and/or override your CEO on, any risk matters
- Provide input on design of the board itself

Please expand upon how your board administers its risk oversight function. For example, please disclose:

- Why your board elected to retain responsibility for risk oversight rather than assign oversight to a board committee
- The time frame over which you evaluate risks (for example, short term, intermediate term, or long term) and how you apply different oversight standards based upon the immediacy of the risk assessed
- Whether you consult with outside advisers and experts to anticipate future threats and trends, and how often you reassess your risk environment
- How the board interacts with management to address existing risks and identify significant emerging risks
- Whether you have a chief compliance officer and to whom this position reports
- How your risk oversight process aligns with your disclosure controls and procedures

⁹ See Item 407(h) of Regulation S-K.



CROWE PRACTICE NOTE

The SEC continues its rulemaking efforts in a number of corporate governance disclosure areas. Recent final rules include:

- *Cybersecurity risk management, strategy, and governance*
- *Issuer share repurchases*
- *Executive compensation clawback*
- *Insider trading*

CorpFin has various strategies to communicate views on registrant compliance with new disclosure rules, including interpretive guidance, public statements, and comment letters. We will continue to keep you informed as we see developments on these new rules.

Non-GAAP measures

Non-GAAP measures¹⁰ are a key focus area of CorpFin staff, and the staff remarked at the December 2023 AICPA and CIMA Conference on Current SEC and PCAOB Developments that non-GAAP measures continue to be the leading area of SEC comment letters. Individually tailored accounting principles (ITAP),¹¹ 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 often receive a comment.

CROWE PRACTICE NOTE

CorpFin updated its “[Non-GAAP Financial Measures](#)” Compliance and Disclosure Interpretations on Dec. 13, 2022, to provide refreshed perspectives on a number of non-GAAP topics.

ITAP

CorpFin has explained that Regulation S-K allows for measures that exclude the amounts from the most directly comparable measure, but it 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. Several examples appear here, but the examples do not address all iterations of this type of comment.

Example SEC comments:

We refer to your non-GAAP measure “Core operating income excluding catastrophe losses” and as further adjusted to exclude prior-period development. While we note that you specifically define catastrophe loss events, it appears that the nature of these losses is integral to your operating results. Please tell us how you considered Question 100.01 of the Non-GAAP Compliance and Disclosure Interpretations. Further, by excluding prior-year development expenses recognized in the current period, it appears that you might be substituting individually tailored recognition and measurement methods for those of GAAP. Please tell us how you considered Question 100.04 of the Non-GAAP Compliance and Disclosure Interpretations.

¹⁰ See Item 10(e) of Regulation S-K.

¹¹ See “Non-GAAP Financial Measures” Compliance and Disclosure Interpretation Question 100.04 at <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>

We refer to your non-GAAP measure “Core operating income with expected level of catastrophe losses,” which excludes catastrophe losses above or below management’s view of typical catastrophe losses for that period. The adjustment is intended to present a performance measure with normalized catastrophe activity. By excluding a portion of the losses incurred, it appears that you have substituted individually tailored recognition and measurement methods for those of GAAP. Please tell us how you considered Question 100.04 of the Non-GAAP Compliance and Disclosure Interpretations.

Please represent to us that in future annual and periodic reports you will revise your adjusted revenue non-GAAP measure to remove the deferred coinsurance ceding commission adjustment or tell us why the acceleration of these deferred commissions is not an individually tailored revenue recognition method. This comment also applies to your adjusted net income (loss) measure. See Question 100.04 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

We note your presentation of the non-GAAP measure “Adjusted EBITDA,” which excludes the impact of the premium deficiency reserve (benefit) expense. Please explain to us your basis for excluding the premium deficiency reserve expense, and tell us:

- Your consideration of whether this relates to a normal, recurring, cash operating (benefit) expense of the company
- Whether the charges associated with this adjustment relate to liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner
- How you considered whether this represents tailored accounting, which is prohibited by Rule 100(b) of Regulation G, as discussed in Question 100.04 of the Non-GAAP Financial Measures Compliance and Disclosures Interpretations

We note that some of the non-GAAP adjustments appear to be changing the basis of accounting applied under U.S. GAAP. For example, such items appear to include the exclusion of the change in fair value of insurance contracts (that is, discount rate and risk margin components) for which you have elected the fair value option and changes in the classification of investable assets based on a management view that “looks through” the legal form of an investment. In the context of each non-GAAP financial measure presented, please tell us how you considered whether these adjustments substitute individually tailored recognition and measurement methods, which could lead to a misleading measure that violates Rule 100(b) of Regulation G. Refer to Question 100.04 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

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.

Prominence

CorpFin routinely comments if the registrant presents non-GAAP information in a way that suggests that information is more important than GAAP results. For example, presenting non-GAAP information before GAAP information in a press release or presenting a full non-GAAP income statement might result in staff comment.

Example SEC comments:

We note your disclosures regarding non-GAAP financial measures and related discussions of those measures throughout the filing. Given the extensive amount of disclosure associated with these measures, please tell us how you considered whether your disclosures and presentation cause these non-GAAP measures to be more prominent than the most directly comparable GAAP measures. Refer to Item 10(e)(1)(i)(A) of Regulation S-K and Question 102.10 of the Compliance and Disclosure Interpretations on Non-GAAP Financial Measures.

Please represent to us that in future earnings releases you will present your GAAP highlights before your non-GAAP highlights. See Compliance and Disclosure Interpretation 102.10 on Non-GAAP Financial Measures, Item 10(e)(1)(i)(A) of Regulation S-K, and Instruction 2 to Item 2.02 of Form 8-K.

Please represent to us that in future earnings releases you will remove the presentation of the full non-GAAP statement of income. See Compliance and Disclosure Interpretation 102.10 on Non-GAAP Financial Measures.



Other compliance issues

CorpFin frequently comments on non-GAAP presentations that do not comply with specific rules or staff interpretive guidance. 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 interpretative guidance prohibits certain non-GAAP presentations (for example, non-GAAP measures that exclude normal cash operating expenses and non-GAAP measures with confusing or misleading labels).

Example SEC comments:

In future filings, please reconcile from the GAAP earnings before income taxes to the non-GAAP operating earnings before income taxes consistent with the guidance in Question 102.10 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations.

We note your explanation of the purpose for the various non-GAAP measures and adjustments appears to be generic and nonspecific to each individual adjustment. Please provide us with a clearer explanation of each individual adjustment and the company's basis for exclusion, and consider the need to revise your disclosures in future filings.

Tell us why it is appropriate to remove your premium deficiency reserves from your expense ratio. In this regard, it appears to be a normal, recurring, cash operating expense. See Question 100.01 of the Non-GAAP Financial Measures Compliance and Disclosure Interpretations.

The title of your non-GAAP financial measure "operating earnings before income taxes" is confusingly similar to that of a GAAP performance measure used by many companies. Please represent to us that in future filings and earnings releases you will change the title of this measure. See Item 10(e)(1)(ii)(E) of Regulation S-K.

CROWE PRACTICE NOTE

Which specific SEC rules and regulations or staff interpretive guidance¹² 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).

¹² See Section 8100 of the CorpFin Financial Reporting Manual



Final thoughts

The example SEC comments in this publication are not a complete population of all recent comments issued in the insurance sector and have been lightly edited for clarity; however, they are representative of the types of insurance issues CorpFin has recently addressed in its review program. The focus of the SEC staff and the comments issued continually evolve, and Crowe will endeavor to keep you informed of new trends.

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