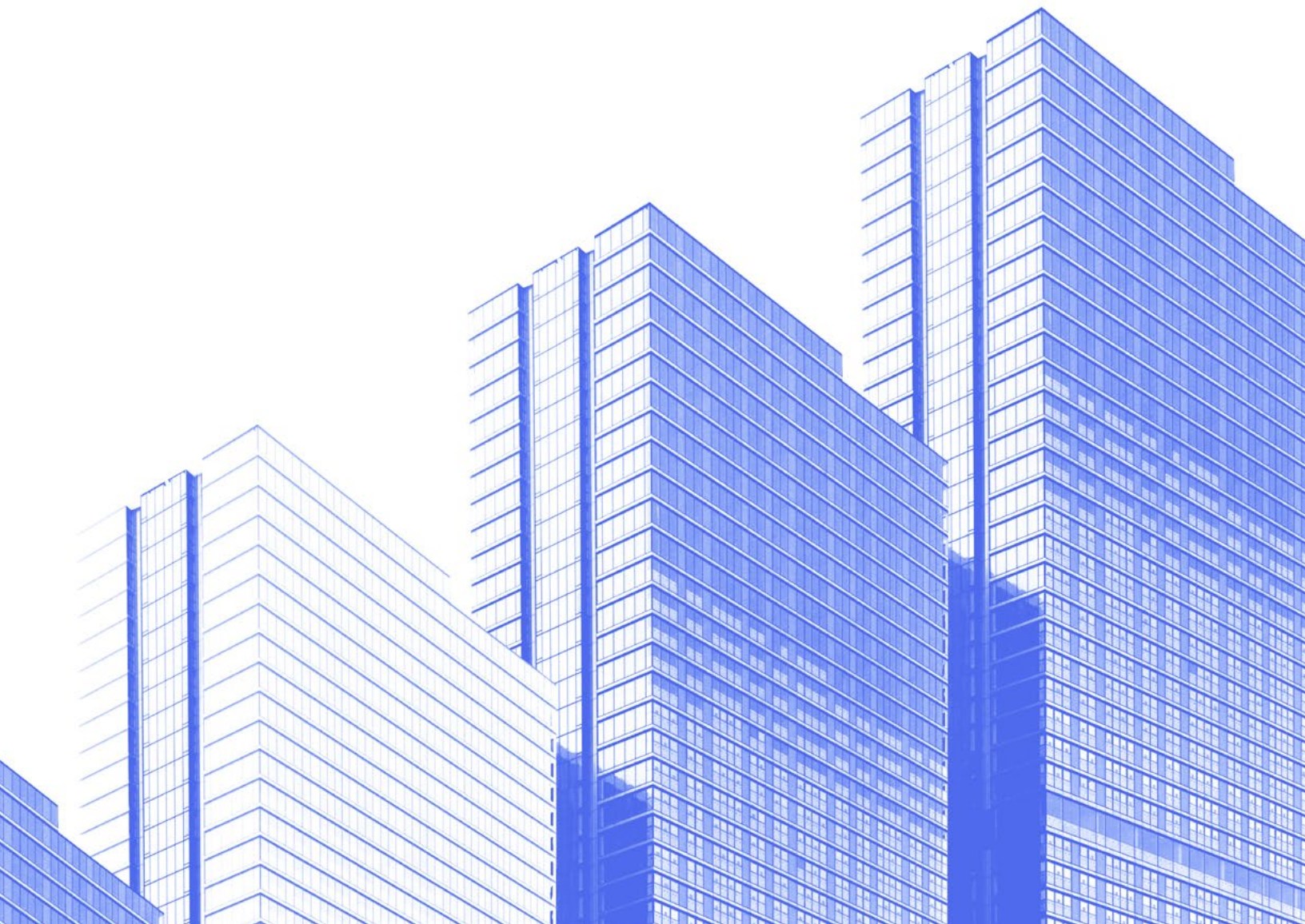
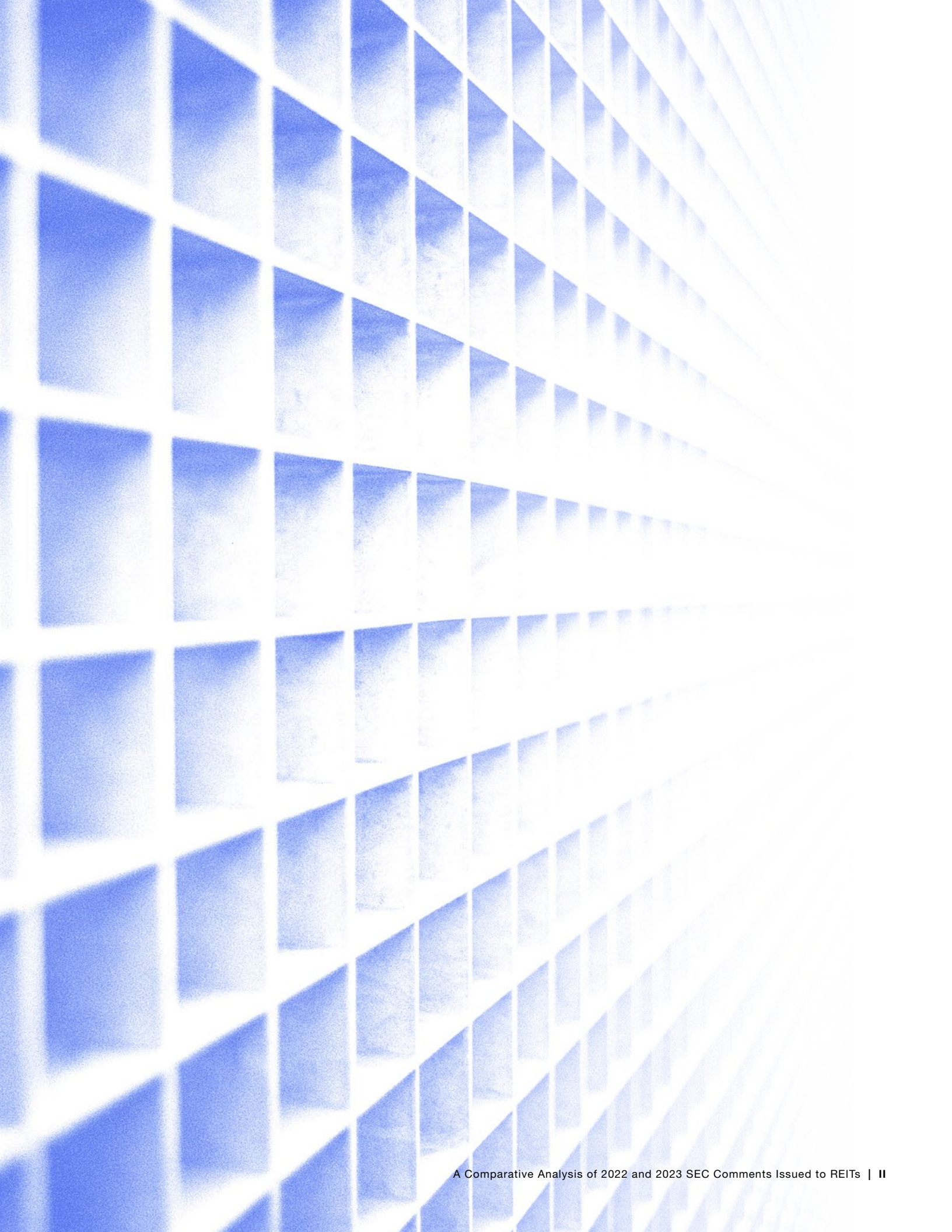


**A Comparative Analysis  
of 2022 and 2023  
SEC Comments  
Issued to REITs**



# Inside

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# SEC Review Process

In recent years, the Securities and Exchange Commission (“**SEC**”) has seemingly increased its scrutiny of disclosure made in public filings, as evidenced by the greater number of comments issued to public reporting companies. Reinforcing this prospect, there was a growing number of SEC comments issued to companies in 2023 regarding calculation of non-GAAP measures. Given this seemingly global trend of enhanced SEC review, and with REITs continuing to be the subject of headlines throughout 2023 and early 2024, we expect the SEC to continue to keep a close eye on the disclosure that REITs make.

In this client alert, we (1) summarize the SEC’s review process for filings that REITs make under the Securities Act of 1933, as amended (the “**Securities Act**”), and the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), (2) explore SEC comments issued to REITs during 2023, and (3) compare SEC comments issued to REITs during 2023 with those issued to REITs during 2022.

The SEC’s Division of Corporation Finance (the “**Division**”) reviews filings made under the Securities Act and Exchange Act to monitor compliance with applicable disclosure and accounting requirements. The Division assigns filings made by companies in a particular industry to one of nine industry offices whose staff members have specialized review expertise. The staff of the Office of Real Estate & Construction (the “**Staff**”) review filings made by REITs.

## Review of Exchange Act Reports

The Sarbanes-Oxley Act of 2002 (“**SOX**”) requires the Division to undertake some level of review of each reporting company at least once every three years. In addition to the required review, the Division selectively pulls certain filings for evaluation.

The Division does not set forth the criteria used for determining which companies to selectively review, but Section 408 of SOX sets forth several factors that may be considered, including:

- whether the company has issued material restatements of its financial results;
- whether the company has experienced significant volatility in its stock price;
- the company’s market capitalization;
- whether the company is an emerging company with a disparity in its price to earnings ratio;
- whether the company’s operations significantly affect any material sector of the economy; or
- any other factor the Division considers relevant.

If the Division selects a company or a filing for review, the extent of that review will depend on many factors, including the criteria set forth above. The scope of a review may be:

- A full cover-to-cover review;
- A financial statement review in which the Staff will examine the financial statements and related disclosures, such as Management’s Discussion and Analysis of Financial Condition and Results of Operations (“**MD&A**”); or
- A targeted-issue review in which the Staff will examine the filing for one or more specific items of particular focus for the SEC.

## Review of Registration Statements

A registration statement filed by a company for an offering of securities is subject to review by the SEC before the offering can commence. Note that the discussion below does not extend to automatic shelf registration statements and registration statements on Form S-8 as these registration statements automatically become effective.

## Review of S-11

For a company's initial Securities Act registration statement, the company may confidentially submit its draft registration statement ("**DRS**") for Staff review provided that the company confirms in a cover letter that it will publicly file the registration statement and nonpublic draft submissions at least 15 days prior to any road show or the requested effective date of the registration statement.

Once the DRS has been submitted, the Staff will determine whether the registration statement should be reviewed in depth, receive a limited review, or be cleared without review. The Staff usually determines within two to five business days after the date of the filing whether the DRS will be reviewed. If the Staff decides not to review, they can make the S-11 effective within 48 hours after notifying the registrant of their decision not to review. However, it is rare that an initial registration statement would not be reviewed by the Staff. Full review of the S-11 entails a thorough review of the registration statement by an examiner and a staff accountant. The examiner reviews all aspects of the registration statement other than the accounting aspects while the staff accountant reviews the financial statements and accounting-related issues.

The Staff generally tries to issue an initial comment letter within 30 days of the date of the initial confidential submission or public filing.

## Review of S-3

A Form S-3 registration statement is a short-form registration statement available to eligible companies. To be able to use Form S-3, a registrant must:

- Be organized under the laws of the United States;
- Have a class of securities that is registered pursuant to Section 12(b) or 12(g) of the Exchange Act;
- Have been subject to Section 12 or 15(d) of the Exchange Act for the past 12 months and has filed all Exchange Act filings required to be filed for at least the past 12 months;
- Have timely filed all Exchange Act reports required to be filed during the past 12 months and any portion of the month before filing the registration statement, including the registrant's:
  - Proxy statement or information statement; and
  - Reports on Form 10-K, Form 10-Q and, with limited exceptions, Form 8-K.

When a Form S-3 registration statement is filed, the Staff will first screen the Form S-3 to ensure the registrant's eligibility to use the form. Once the registrant is confirmed to be eligible to use Form S-3, similar to other registration statements, the Staff will determine whether the registration statement should be reviewed (and, if so, whether the filing will be subject to a full or a limited review). The Staff's decision typically will be relayed to the registrant within two to five business days. Unlike long-form registration statements on Form S-11, the Staff is much more likely to decide not to review a Form S-3.

## Receiving Staff Comments

Most commonly, the Staff provides a company with comments where it believes a company has not complied with the SEC's rule requirements, should enhance its disclosures and/or can provide additional information.

There are generally three types of comments issued:

- Substantive comments requesting revisions to the disclosure to provide clarity with regard to language that is ambiguous or that is inconsistent with other disclosure included or incorporated by reference in the filing;
- Comments requesting supplemental information to assist the Staff in assessing the company's disclosure; and
- Comments regarding technical or procedural deficiencies, such as the inclusion of certain required exhibits and the appropriateness of adjustments to non-GAAP measures.

Generally, comments are provided to the company in the form of a written comment letter. In certain circumstances, the Staff may provide oral comments in addition to (and occasionally in lieu of) a written comment letter. If a company receives oral comments, the company should ask the Staff examiner how he or she would like to receive the company's response. Best practice is to respond to oral comments with a written letter to document formally the oral comment that was conveyed and the company's response.

It is possible that Staff review may involve multiple rounds of comments and responses. When all issues relating to a review are resolved to the Staff's satisfaction, the SEC advises the company by letter, often preceded by a phone call from the Staff examiner, that it has no further comments, and that the Staff's review is complete. All comment letters and related responses are posted to SEC's EDGAR website approximately 20 business days after the review has been completed. However, a company can request confidential treatment of portions of its response letters. If this request is granted, only the non-confidential portions of a response letter are made publicly available.

**PRACTICE NOTE:** The best way to avoid drawing comments is to be prepared. Registrants should understand the regulations and keep apprised of developments in SEC rules and disclosure practice. For instance, COVID-19, inflation and the war in Ukraine have all resulted in the Staff pushing for enhanced disclosures. Due to the global implications of such topics, the SEC's focus was, frankly, predictable and understandable. Being prepared also means reviewing relevant comment letters and responses—as well as any disclosure changes that resulted from the comment letters—to discern what topics are of particular interest to the SEC and how the comments ultimately were resolved, all of which should inform the company's disclosures in periodic reports and registration statements, as applicable.

## Responding to Staff Comments

Most comment letters request that the recipient reply with a written response to the comments therein within 10 business days. If the company believes it needs more time to respond to the Staff's comments, the company should contact the Staff to request additional time as soon as possible or seek clarification on any of the comments.

Key considerations and best practices for drafting a response letter include:

- Assess the nature of the comment(s) and allocate responsibility to address each comment. In some cases, it may be necessary or advisable to seek input from outside legal counsel and auditors.
- Prepare a shell response letter as soon as possible. The shell response should include an introductory paragraph explaining that the correspondence is being submitted in response to a comment letter received by the company regarding the applicable filing (or, if applicable, that the company is responding to an oral comment) as well as a reproduction of each of the Staff's comments, each of which would be followed by a space for the company's responses. This will ensure that you clearly and directly address every comment issued.

- Receipt of a comment does not necessarily mean that the Staff has reached a final conclusion on the topics addressed in the comment. For that reason, if the company does not agree with the Staff's request for suggested or amended disclosure, the company should feel free to identify the points raised by the Staff with which it respectfully disagrees. When explaining such divergence of opinion, the company should provide the Staff with any bespoke facts and circumstances and provide as much insight as possible into the judgments it made in applying the relevant regulations or guidance.
- Best practice is to review recent comment letters and responses to keep apprised of trends relating to SEC comments issued to peer companies before a comment letter has been received. Reviewing publicly available correspondence can also prove useful when weighing how to respond to a comment letter; however, companies should be careful not to rely too heavily on previously published correspondence when crafting their response letters. For a stronger, more compelling response, registrants should cite authoritative literature and SEC guidance whenever possible.
- If the comment requests additional or revised disclosure in future filings, consider including the proposed additional or revised disclosure in the response letter, and identifying the page in the filing where the revised or additional disclosure appears, to minimize the chances of receiving future comments relating to the applicable disclosure.
- Remember that comments and responses are made public on the SEC's EDGAR website after the review process has ended. While this may be helpful in terms of reviewing responses to comments from similarly situated companies, it also means that your responses ultimately will be publicly available. Accordingly, be mindful of what you provide in response and consider ahead of responding whether to request confidential treatment

# Comparative Analysis of SEC Comments Issued to REITs in 2022 and 2023

Below, we summarize key findings of our review of SEC comments issued to REITs during 2023, as compared with SEC comments issued to REITs during 2022.

In 2023, 113 comments were issued to 34 REITs. 24 of these companies are, or were at the time the comment was issued, REITs whose securities are listed on the New York Stock Exchange or NASDAQ (“**listed REITs**”). 10 of these companies are, or were at the time the comment was issued, registered with the SEC, but have shares that do not trade on a national securities exchange (“**non-listed REITs**”).

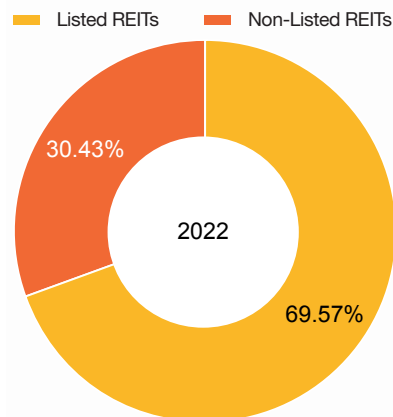
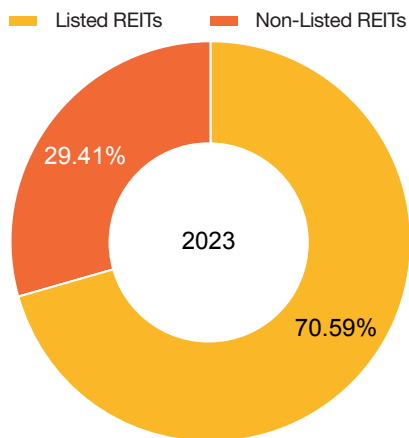
In 2023, each non-listed REIT received more comments on average than each listed REIT. 54 of the 113 comments, or approximately 48%, were issued to the 10 non-listed REITs, while 59 comments or approximately 52%, were issued to the 24 listed REITs. Consequently, on average, 5.40 comments were issued to each non-listed REIT and 2.46 comments were issued

to each listed REIT. One explanation for the disparity in the number of comments issued to listed REITs as compared to those issued to non-listed REITs is that non-listed are typically engaged in continuous offerings.

In contrast, in 2022, only 56 comments were issued to 23 REITs. 16 of these companies are, or were at the time the comment was issued, listed REITs. Seven of these companies are, or were at the time the comment was issued, non-listed REITs.

In further contrast, in 2022, each listed REIT received more comments on average than each non-listed REIT. 45 of the 56 comments, or approximately 80%, were issued to the 16 listed REITs, while 11, or approximately 20%, were issued to the seven non-listed REITs. Thus, on average, 2.81 comments were issued to each listed REIT and 1.57 comments were issued to each non-listed REIT during 2022.

## Listed vs. Non-Listed REITs Receiving Comments





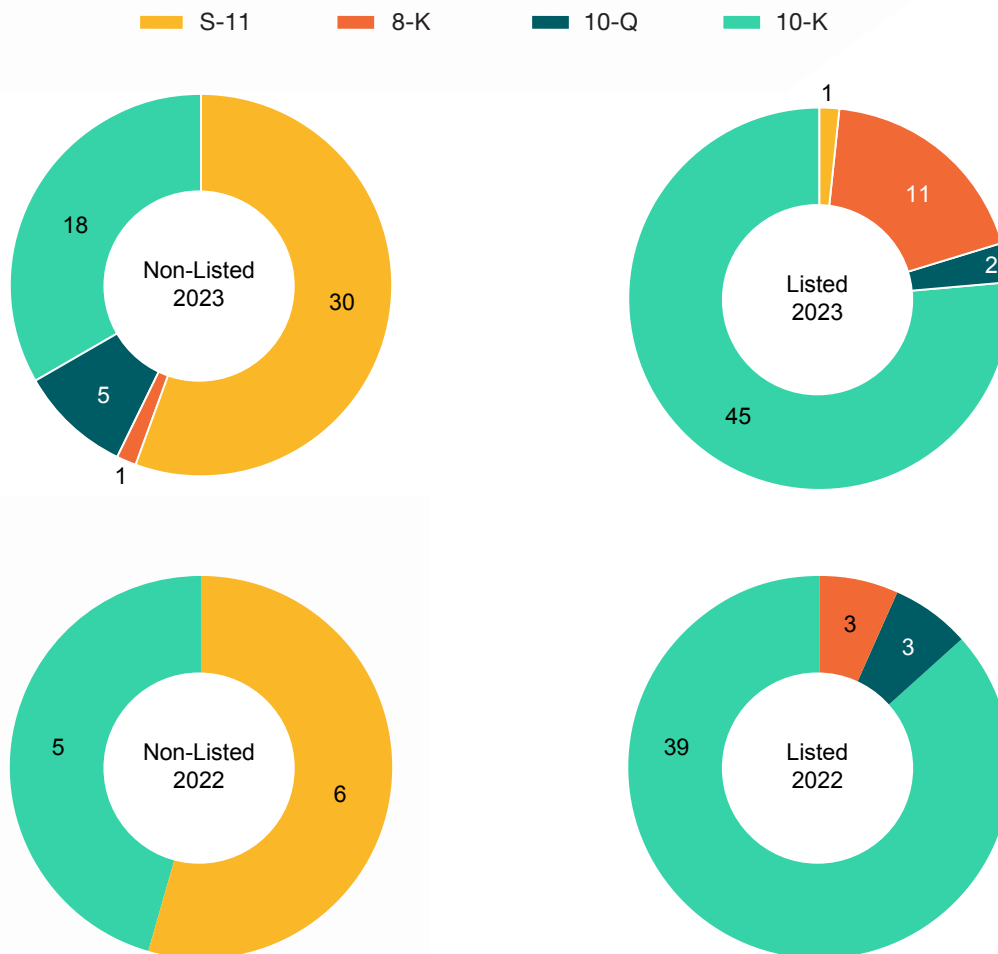
In both 2022 and 2023, the majority of comments issued to non-listed REITs related to registration statements. In 2023, of the 54 comments issued to non-listed REITs, approximately 56%, or 30 comments, related to registration statements on Form S-11. The remaining 44%, or 24 comments, related to Forms 10-K, 10-Q and 8-K. In 2022, of the 11 comments issued to non-listed REITs, approximately 55%, or six comments, related to registration statements on Form S-11. The remaining 45%, or five comments, related to Form 10-K.

Conversely, in both 2022 and 2023, the majority of comments issued to listed REITs were directed at periodic and current reports. In 2023, 58 of the 59 comments issued to listed REITs, or approximately

98.3%, were related to periodic and current reports. In 2022, all 45 comments issued to listed REITs, or 100%, were related to periodic and current reports. In both 2022 and 2023, Annual Reports on Form 10-K garnered the most comments.

Unsurprisingly, for both 2022 and 2023, non-listed REITs received the most comments regarding valuation and calculation of net asset value as well as their share repurchase and redemption programs. The majority of comments issued to listed REITs in 2022 and 2023 related to financial statements and metrics. See below for a further breakdown of comment categories and for a deeper dive into comment trends for both listed and non-listed REITs.

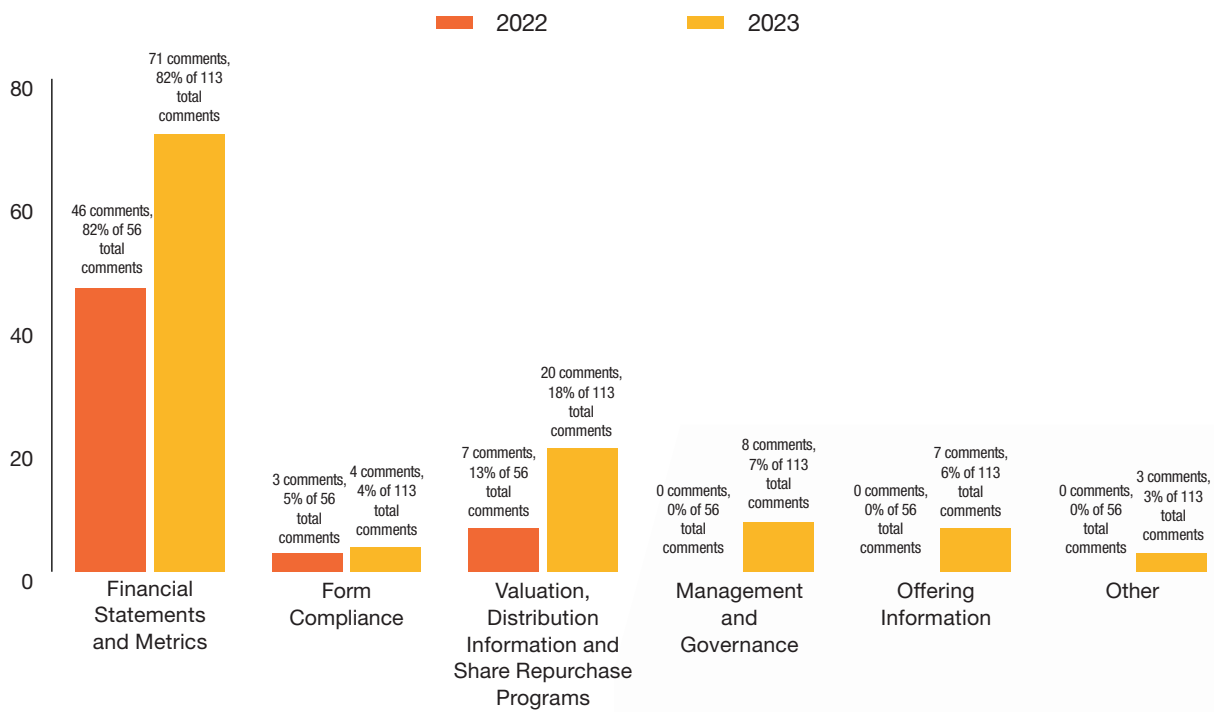
### Comments by Filing Type



# Comment Categories

There are seven broad categories into which the comments issued fall:

Comments by Category



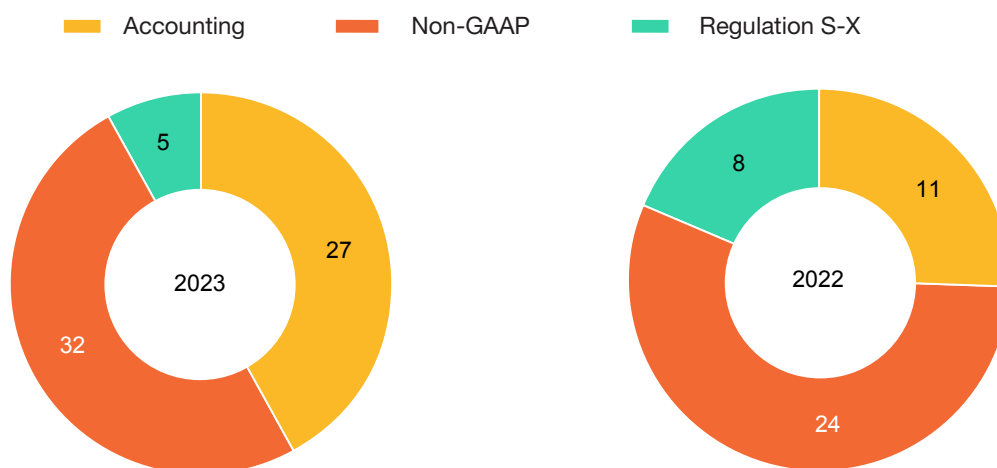
\*Due to rounding, percentages may not total 100%.

# Financial Statements and Metrics

This category includes comments relating to financial statements and related notes as well as other performance metrics used by registrants. In 2023, 54 of the 71, or 76%, of the comments in this category were issued to listed REITs. In 2022, 45 of the 46, or 98%, of the comments in this category were issued to listed REITs.

Within this category, there are three major sub-categories: comments related to the company's accounting treatment; comments related to the use of non-GAAP financial measures; and comments related to providing the relevant information required under Regulation S-X.

**Financial Statements and Metrics Comments by Sub-Category**



## Accounting

The Staff is often focused on how the Accounting Standards Codification (“ASC”) has been interpreted and applied as well as financial statement presentation and footnote disclosure. Frequent topics of comment include:

- Variable Interest Entity and Joint Venture accounting in accordance with ASC 10 and 323; and
- Segment reporting under ASC 280.

### Sample Comments

- In order to better understand your current accounting and intended future accounting please provide us with your analysis under ASC 810 and ASC 323 such that you were

able to conclude that you do not consolidate the operating partnership currently even though you have control and that even with such control you expect to account for the operating partnership initially as an equity method investment.

- We note your segment measure of profit or loss is reconciled to income from operations as presented in your consolidated statements of operations. In future periodic filings, please reconcile your segments’ measure of profit or loss to consolidated income before income taxes. Refer to ASC 280-10-50-30b

## Non-GAAP

The use of non-GAAP measures frequently results in comments from the SEC regarding compliance with Regulation G and Item 10(e) of Regulation S-K. Areas of focus have included:

- presenting the most directly comparable GAAP measure with equal or greater prominence;
- reconciliation of the most comparable GAAP financial measure; and
- disclosure of why the issuer believes the non-GAAP presentation provides information that will be useful to investors.

Additionally, the SEC issued guidance entitled “Non-GAAP Financial Measures” in December 2022. This guidance has and will likely continue to trigger reviews and comment letters regarding the use of non-GAAP financial measures.

### Sample Comments

- We note your presentation of the non-GAAP financial measure net spread and dollar roll income and further-adjusted measures, reconciled from net interest income as the most directly comparable GAAP financial measure. Given the inclusion of total operating expense as a component of these measures, it appears these measures are more akin to an operating measure. Therefore, please tell us why you believe net interest income, which contemplates only expenses used to fund your interest-earning assets is the most directly comparable measure calculated in accordance with GAAP. In your response, specifically address your consideration of net income or similar measure calculated in accordance with GAAP as the most directly comparable measure to the non-GAAP financial measures addressed herein.
- We note that your non-GAAP measure ‘economic net interest income from financial assets’ is reconciled to ‘net operating income from financial assets determined in accordance with GAAP,’ which also appears to be a non-GAAP measure. Please tell us how your presentation is consistent with Item 10(e) of Regulation S-K; specifically, tell us how you determined that you have reconciled ‘economic net interest income from financial assets’ to the most directly comparable GAAP measure.
- We note your presentation of property operating expenses, excluding deferrals and property

management and income from property operations, excluding deferrals and property management. Please tell us, and revise your disclosure to address, how you believe these non-GAAP financial measures provide useful information to investors. In addition, please clarify for us how you determined property management expense is not a normal, recurring, cash operating expense necessary to operate your business. Please refer to Item 10(e) of Regulation S-K and Question 100.01 of the Non-GAAP C&DI.

- We refer you to your non-GAAP financial measures FFO and Adjusted FFO. It appears that such non-GAAP measures are the result of a GAAP measure adjusted to add the change in your deferred revenue liability, having the effect of accelerating the recognition of revenues to recognize the entire amount of payments received as revenues in the current period, as opposed to recognizing the revenues over a •-year period. Please tell us how you have determined these measures are not tailored measures as contemplated in Question 100.04 of the Non-GAAP C&DI.

## Regulation S-X

When a REIT acquires or disposes of a business or a significant amount of assets, the transaction may trigger financial disclosure under Regulation S-X. The SEC has issued multiple comments to ensure potential investors are able to assess the financial impact of certain real estate acquisitions such that they are able to make an informed investment decision.

### Sample Comments

- We note your disclosure of the acquisition of property with a gross asset valuation of approximately \$2 billion. It does not appear that financial statements and related pro forma financial information have ever been filed for this acquisition. Please clarify how you considered Rule 3-14 and Article 11 of Regulation S-X in determining that such financial statements and associated pro forma financial information are not required. Your response should include your detailed calculations of significance. Specifically, within your significance calculation, please highlight how the assumed debt secured by the acquired property factored into your calculation pursuant to the guidance in paragraph (b)(2)(ii) of Rule 3-14 of Regulation S-X.

## Management and Corporate Governance

The SEC pays special attention to externally managed REITs and frequently issues comments to ensure investors are given all relevant information about potential conflicts of interests and that there are adequate policies in place to align the external manager or advisor with stockholders. Areas of frequent comment are:

- management's compensation and fees;
- management and affiliates' prior experience and involvement in other programs; and
- allocation of investment opportunities.

### Sample Comments

- Please describe any termination fees that may be payable to your adviser, dealer manager or any of their affiliates.
- Please provide a hypothetical example as to how you will calculate the performance participation allocation.
- Please balance the discussion of the competitive strengths of your advisor with equally prominent disclosure of the challenges you face and the risks and limitations that could harm your business or inhibit your strategic plans. For example, but without limitation, provide a discussion of any losses or adverse business developments for your advisor. Further, in the prior performance section, please ensure that you provide all of the disclosure requirement by Item 8 of Industrial Guide 5.
- We note your disclosure in the prospectus that there may be overlap of investment opportunities with other programs. Please expand your disclosure to provide insight into these competing funds, such as the size and type of funds. Also describe in greater detail how opportunities are allocated and conflicts of interest resolved.

## Offering Information

The Staff often asks clarifying questions regarding the mechanics of the REIT offering. Comments received in this category are often focused on:

- whether an offering qualifies as delayed or must comply with requirements applicable to blind pools; and
- requests for supplemental information.

### Sample Comments

- We note that you have issued Class A preferred shares. Please revise your summary section to disclose the rights that the individuals holding these preferred shares have, describe the impact of these shares on investors in this offering, and add risk factor disclosure as appropriate.
- Please note that pursuant to Rule 415(a)(2), you may only register that amount of securities that you reasonably expect to offer and sell within two years of the effective date of the registration statement, and that the offering must terminate within three years from the date of effectiveness. Please revise your disclosure to state the date that the offering will end and clarify that you may engage in future offerings. See Item 501(b)(8)(iii) of Regulation S-K. Please also note Rule 415(a)(5) and (a)(6), which would permit you to file a new offering to continue to sell, but that this offering would terminate upon effectiveness of the new offering.
- Please supplementally provide us with copies of all written communications, as defined in Rule 405 under the Securities Act, that you, or anyone authorized to do so on your behalf, present to potential investors in reliance on Section 5(d) of the Securities Act, whether or not they retain copies of the communications.

- Please provide us with all promotional material and sales literature, including material that will be used only by broker-dealers. In this regard, please note that sales materials must set forth a balanced presentation of the risks and rewards to investors and should not contain any information or disclosure that is inconsistent with or not also provided in the prospectus. Please refer to Item 19.B of Industry Guide 5. In addition, please confirm that you will continue to provide us sales materials prior to use for the duration of the registered offering.
- Please expand your disclosure to include a discussion of the specific methodologies used to determine the fair value of each class of asset or liability that makes up your net asset value (e.g. discounted cash flow, direct capitalization, comparable sales). Your disclosure should include a discussion of the significant inputs used to value each class of asset or liability including a sensitivity analysis where applicable.
- Please provide to us your basis for including goodwill in your calculation of NAV. Include within your response how your calculation is consistent with your policy disclosure that indicates your valuation was performed in accordance with the provisions of Practice Guideline 2013-01 issued by the Institute for Portfolio Alternatives, which notes that when determining gross asset value for purposes of NAV valuation methodology, intangible assets are to be excluded, including all assets/liabilities required by ASC 805.

## Valuation Share Repurchase Programs

For non-listed REITs, the SEC is concerned about investors receiving transparency regarding valuation and liquidity. Therefore, the Staff comments are frequently focused on:

- NAV calculation; and
- share repurchase programs.

### Sample Comments

- Please describe the difference between the founder shares and the non-founder shares and any effect such difference could have on distributions.
- We note that following the initial measurement of loans secured by real estate, the Company will determine fair value by utilizing or reviewing market yield data, discounted cash flow modeling, collateral asset performance, local or macro real estate performance, capital market conditions, debt yield or loan-to-value ratios, and borrower financial condition and performance. Given this policy, please tell us why the level 3 investments in real estate debt have been valued at cost, as adjusted for changes in foreign currency.
- Please provide us, on a supplemental basis, with your template for future NAV disclosures.
- We note that you may conduct the share repurchase program during the offering period of the shares being registered under this registration statement. Please be advised that you are responsible for analyzing the applicability of Regulation M to your share repurchase program. We urge you to consider all the elements of your share repurchase program in determining whether the program is consistent with the class relief granted by the Division of Market Regulation in the class exemptive letter granted Alston & Bird LLP dated October 22, 2007. To the extent you have questions as to whether the program is entirely consistent with that class exemption you may contact the Division of Trading and Markets at 202-551-5777.

# Compliance with Form Requirements

The Staff often issues comments regarding inconsistent disclosures and/or deficiencies related to compliance with the instructions or item requirements applicable to registration statements (i.e., Forms S-3 and S-11) and Exchange Act reports (i.e., Forms 10-K, 10-Q and 8-K). These comments are typically more administrative and formulaic.

The majority of the 7 form comments from both 2022 and 2023 were issued on registration statements. Comments are often focused on the following:

- failure to provide an exhibit;
- staleness of financial statements and other information provided; and
- incorrect formatting or presentation.

**PRACTICE NOTE:** From the number of Form comments issued, it is clear that REITs have an opportunity to significantly reduce the likelihood of SEC comments by carefully checking filings to ensure the requirements of the applicable Form and regulations are met.

## Sample Comments

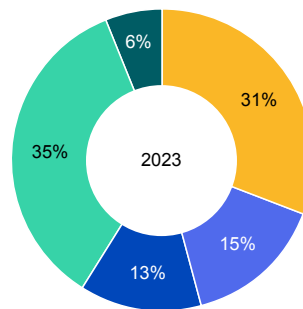
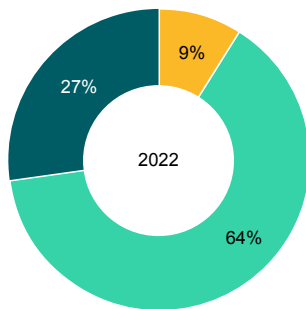
- Please tell us how you complied with Item 601(b)(22) of Regulation S-K, or tell us how you determined it was not necessary to include Exhibit 22 listing each subsidiary guarantor, issuer or co-issuer.
- Please file the joint venture agreement in accordance with Item 601(b)(10) of Regulation S-K or tell us why you believe you are not required to file this agreement.
- We note your disclosure that you intend to hire an institutional investment manager. Please file this agreement in accordance with Item 601(b)(10) of Regulation S-K and identify the manager.
- Please revise the legal opinion filed as Exhibit 5.1. The opinion should not assume material facts underlying the opinion. In this regard, we note that the opinion assumes that upon issuance, the total number of shares issued and outstanding will not exceed the total number of shares the company is then authorized to issue. However, this assumption goes to whether the shares will be validly issued. See Item II.B.3.a. of Staff Legal Bulletin No. 19.
- It appears that your Section 10(a)(3) update for December 31, 2021 financial statements was required by April 30, 2022. Please provide us with a legal analysis of your compliance with Section 10(a)(3) of the Securities Act of 1933. Please also advise whether you engaged in sales of your securities in the interim, and, to the extent you made such sales, please advise what consideration you have given to including disclosure regarding the potential violation of Section 5 of the Securities Act.

# Comments Based on Listing Status

## Comments Issued to Non-Listed REITs

As is to be expected, the data from 2022 and 2023 indicates that non-listed REITs are more likely to receive comments regarding Compliance with Form Requirements, Management and Governance, Offering Information and Valuation, Distribution Information and Share Repurchase Programs than listed REITs. Financial Statements and Metrics remained one of the top categories of comments by number, with the most frequent topic related to accounting and non-GAAP.

Non-Listed REITs' Comments by Category



- Financial Statements and Metrics
- Management and Governance
- Offering Information

- Valuation, Distribution Information and Share Repurchase Programs
- Compliance with Form Requirements



## Comments Issued to Listed REITs

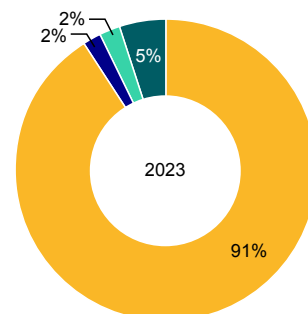
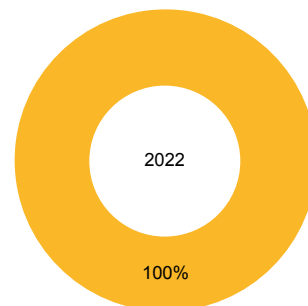
Listed REITs' top category of comments by number is overwhelmingly Financial Statements and Metrics. Within the broader category of Financial Statements and Metrics, comments regarding non-GAAP measures were the most common, demonstrating the need for thoughtful consideration of and compliance with Regulation G and Item 10(e) of Regulation S-K. For each substantive category other than Financial Statements and Metrics, non-listed REITs received more comments than listed REITs.

## A Note on Methodology

Review was limited to comments issued on Forms S-3, S-11, 10-K, 10-Q and 8-K. The analysis is based on SEC uploads and does not include registrant response letters or SEC "closing review" letters. To maintain a consistent methodology, only comments received between January 1, 2022 and December 31, 2023 were included in the review, regardless of when the forms were filed or whether the SEC had issued prior comments. Further, note that the analysis extends only to information related to reviews that have been closed and subsequently posted to EDGAR. Therefore, the statistics presented below may be affected by reviews that are still ongoing or have recently been closed but not yet publicly released.

Some of the SEC comments reproduced in this client alert were edited in the interest of anonymity, clarity and brevity.

## Listed REITs' Comments by Category

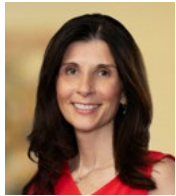


- Financial Statements and Metrics
- Valuation, Distribution Information and Share Repurchase Programs
- Compliance with Form Requirements
- Other

# About Morrison Foerster

Morrison Foerster's REIT practice is a collaborative, integrated, multi-office practice involving capital markets, corporate, finance, M&A, investment management, real estate, tax, and other attorneys throughout the firm. Attorneys in the REIT practice area are actively involved in advising listed public REITs, non-listed public REITs, private REITs and REIT sponsors, contributors, investors, investment advisers, underwriters, and institutional lenders on all aspects of REIT activity.

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