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Use of Non-GAAP Measures Not Questioned in Recent Charges

Last week, government authorities charged Brixmor Property Group and certain of its former executives with a fraudulent scheme to manipulate a key non-GAAP accounting measure commonly used by REITs, Same Property Net Operating Income (“SP NOI”). In a [criminal indictment](#) and [SEC Complaint](#), the government alleged that the former executives “engineer[ed] the numbers they needed” to convince the market that Brixmor had met performance expectations. These charges highlight the importance of consistent application of accounting principles, clear disclosure of methodologies employed and deviations from past practice, and ensuring a reporting culture built around integrity and forthrightness with the market, all of which are alleged to have been missing at Brixmor.

The allegations, if true, reflect plain-vanilla accounting fraud: the former executives intentionally manipulated a closely followed financial metric to mislead investors and analysts regarding the company’s financial performance. In particular, the government has alleged that former executives made improper accounting adjustments with the aim of reporting false SP NOI Growth Rate figures. These allegedly false figures led investors to believe that Brixmor’s SP NOI Growth Rate was stable and hit the “middle of its guidance range virtually every quarter.” In fact, the responsible former executives allegedly knew that the rate had fluctuated wildly each quarter and was outside the guidance range in six of the nine quarters in the period under scrutiny. Among other things, the alleged accounting manipulations included improper timing for the recognition of revenue (in violation of GAAP), incorporating certain income into the SP NOI that the company repeatedly represented would be excluded from that metric, and improperly adjusting comparison period SP NOI numbers to make the SP NOI Growth Rate appear higher.

The SEC’s complaint makes clear that it was not the use of non-GAAP metrics that the government found to be problematic, but the intentional manipulation of these metrics.

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