



Undisclosed SEC Investigations January 12, 2012

Undisclosed SEC Investigative Activity

Jefferies Group Inc. (JEF- \$14.62 Mkt. Cap.- \$2.9 B) *New SEC Data Point Re-affirms Risk of Involvement in an Undisclosed SEC Investigation.* In a letter dated 28-Sep-11, the SEC confirmed that this company was somehow involved in an active and ongoing investigation that appeared undisclosed at the time. In a letter dated 11-Jan-12, we received new information from the SEC suggesting, again, this company was involved in unspecified SEC investigative activity. We continue to find no disclosure of the same as of this date.

Medifest Inc. (MED- \$15.78 Mkt. Cap.- \$244 mm) *Possible, Undisclosed SEC Investigation.* In a letter dated 6-Jan-12, we received information from the SEC suggesting this company was involved in unspecified SEC investigative activity. We found no disclosure of the same as of this date.

No Recent Investigative Activity Found

No SEC Investigative Activity: As of the date of the SEC response in the table below, we received information from the SEC to suggest the absence of recent SEC investigative activity on the following companies:

Company	Ticker	Date of SEC Response
Akamai Technologies Inc.	AKAM	6-Jan-12
Alexander & Baldwin Inc.	ALEX	11-Jan-12
Align Technology Inc.	ALGN	11-Jan-12
Bed Bath Beyond Inc.	BBBY	11-Jan-12
Callaway Golf Company	ELY	11-Jan-12
Centene Corp.	CNC	11-Jan-12
Chico's Fas Inc.	CHS	11-Jan-12
Dendreon Corp.	DNDN	6-Jan-12
Dish Network Corp.	DISH	11-Jan-12
Edwards Lifesciences Corp.	EW	11-Jan-12
EnergySolutions Inc.	ES	11-Jan-12
Global Payments Inc.	GPN	11-Jan-12
Hartford Financial Services Group Inc.	HIG	6-Jan-12
Hospitality Properties Trust	HPT	5-Jan-12
JA Solar Holdings Co.	JASO	10-Jan-12
Mellanox Technolgies Ltd.	MLNX	11-Jan-12
Murphy Oil Corp.	MUR	11-Jan-12
Netsuite Inc.	N	11-Jan-12
NuVasive Inc.	NUVA	11-Jan-12
Senior Housing Properties Trust	SNH	6-Jan-12

TFS Financial Corp.	TFSL	6-Jan-12
Titanium Metals Corp.	TIE	6-Jan-12

YOUR FAVORITE COMPANY MAY HAVE AN UNDISCLOSED SEC PROBE: NOW WHAT?

When we report on risk of undisclosed SEC investigative activity for a company, it is based upon a response from the United States Securities and Exchange Commission (SEC) to one of the approximately 2,500 Freedom of Information Act (FOIA) requests we file with the agency each year. Our requests seek certain information on public companies. Our reporting of undisclosed SEC investigative risk starts with the SEC's assertion of a law enforcement exemption in response to one of our FOIA requests. (Note: In our research notes and reports, our use of the term "possible" or "confirmed" SEC investigation pertains to technicalities related to the FOIA. For risk assessment purposes, we treat them as essentially the same. This write-up assumes as much as well.)

Let us be clear: Unless previously announced, it is highly unusual for us to know with certainty that a public company is involved in an SEC investigation/inquiry. All we know is that some of our FOIA requests are occasionally partially (or totally) denied under the law enforcement exemption of the FOIA. Typically, this type of denial is based upon the existence of some kind of investigative activity involving the company.

A company that is somehow involved in an SEC investigation can be in serious trouble (e.g., the SEC is investigating the company's revenue recognition because it is fraudulent) or the company can be merely exposed to some other party's wrongdoing (e.g., the SEC is investigating market manipulation of the company's stock by an unrelated party). These two scenarios represent extremes on the risk spectrum for companies involved in SEC investigations.

The denial could mean that the SEC itself has commenced either an informal or formal nonpublic investigation of the company. It could also mean that the SEC is investigating someone else, but that the information we sought is part of the investigation in some way. Or, it could mean that the SEC has commenced a public enforcement proceeding, though in most cases we likely would have heard about it by now. It could also mean that the documents requested are important to another agency that has requested that the SEC not release them. Again, the other agency could be interested in the company or it could be someone else.

Regardless, the denial means there is almost certainly some level of risk that the company involved *could* itself be under investigation by the SEC. However, as our scenarios above illustrated, the risk to the company associated with that possible investigation ranges from serious to nonexistent.

We don't mean to appear non-committal on this or to sound as though we are beating a dead horse. The implications of this data point are sufficiently serious that it is essential that we be as fair as we can.

How Best to Assess the Risk

As an established practice, we generally encourage subscribers with an interest to contact directly any company on which we report the risk of undisclosed SEC investigative activity. In making such company contact, we advise clients they should try:

1. To make a reasoned assessment regarding the possibility that there either does/does not exist an SEC Division of Enforcement inquiry somehow related to the company, or;
2. To see if the company otherwise has information to help understand why the SEC would deny a request for its documents based on the law enforcement exemption.

Here are some questions that we have found helpful in making these assessments:

1. We use a service [that's right – blame Disclosure Insight®; the SEC knows us well] that provides us with information about companies that may be involved in undisclosed SEC investigations. They issued a

research note alerting us to the risk of undisclosed SEC investigative activity involving your company. This was based on information they received from the SEC in response to a Freedom of Information Act they had filed on your company. Is there any reason you know of that would have caused the SEC to send them that response?

2. What contact, if any, has your company had with the SEC's Division of Corporation Finance in the past two years?
3. What contact, if any, has your company had with the SEC's Division of Enforcement in the past two years?
4. Would you be in a position to know if any one else at your company has had contact with the SEC's Division of Enforcement?

In the presence of affirmative answers to the above questions, you will wish to ascertain the nature of the contact (as in, what did it entail), when contact first occurred, when was the last time the company last heard from the SEC on the matter in question, and why has the matter not been disclosed (assuming it has not).

If you are a full service subscriber, we also encourage you to call us. We will expedite your understanding and even help you to interpret the answers you hear in reply. This is done in total confidence as we never reveal the names of our clients or matters we discuss with them.

Further, and this applies whether we've issued an alert or not, we also routinely help client subscribers – again, in total confidence – to parse-out and interpret SEC-related disclosures you encounter in your day-to-day work.

If we have a D.I. Report® on a company, you most definitely want to include it in your analysis. Many of the 100 risk factors we screen for in a D.I. Report® are triggers for SEC investigative activity. Our report can rapidly help you to put the risk of undisclosed SEC risk into context.

Helpful Background on SEC Investigations

An SEC investigation is a fact-finding inquiry. It does not necessarily mean that a public company, or anybody for that matter, has done anything wrong. Indeed, when the SEC sends out a request for information in an investigation it advises the recipient of the request that an investigation does not mean that anyone has broken the law or that the SEC has a negative opinion of any person, entity or security. People experienced with SEC investigations tell us, however, that the SEC generally will not commence an investigation without having a real concern that someone has engaged in wrongdoing. The SEC has limited resources and does not initiate investigations lightly.

The SEC conducts investigations in two ways, formally and informally. Enron's investigation started out as informal, but quickly became formal. A formal investigation is one where the SEC uses its subpoena power to compel the production of documents and witnesses. An informal investigation relies on the cooperation of the persons from whom information is sought. Whether an investigation is described as formal or informal, the implications may be serious. Both kinds of investigations can lead to so-called "enforcement proceedings." Both kinds of investigations can also lead to no action at all.

Unlike SEC investigations, SEC enforcement actions are public. The SEC initiates two basic kinds of enforcement proceedings: Lawsuits filed in federal courts and administrative proceedings initially heard by an administrative law judge and ultimately decided by the SEC Commissioners themselves. Although both kinds of proceedings are civil proceedings, not criminal actions, the consequences of SEC enforcement actions can be quite severe. Among other things, the SEC can seek and obtain substantial fines, force companies to restate their financial statements, and to change their accounting practices in significant ways. The SEC can also seek to bar persons from serving as officers or directors of public companies and thus can have a serious impact on a company's management.

The SEC often shares the information it obtains in its investigations with other federal and state law enforcement agencies, including the FBI, the Department of Justice, and the IRS, just to name a few. The Department of Justice and the US Attorneys located throughout the country sometimes work closely with the SEC. Based on what they learn, criminal prosecutions can result.

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