

*This report provides a summary of relevant data and documents we received in response to Freedom of Information Act (FOIA) requests we filed on this company.*

**Disclosed SEC Investigation(s) Confirmed as On-going  
Inadequate Disclosures Make It Impossible to Assess this Material and On-going Risk**

**Watch List Status: Not on Watch List of Companies with Undisclosed SEC Investigations**

On 17-Mar-2015, Akorn filed an 8-K in which the company stated and explained why previously issued financial statements could no longer be relied upon. We got our first sign the SEC was investigating Akorn on 15-Oct-2015. But Akorn did not make its first disclosure of an SEC probe until 04-Nov-2015. This was nearly eight months after a non-reliance on financials warning issued in Mar-2015. A US Attorney investigation was also disclosed at that time. Disclosures since then have been cut-and-paste repeats of the limited disclosures previously made. SEC investigative activity was recently confirmed as on-going, so it appears this remains an exposure to the company. Relevant excerpts from company disclosures appear in this report.

It is not common to see the US Attorney run an investigation alongside an SEC probe. There is only one reason for doing this: SEC probes are civil and someone in the government has reason to believe a criminal probe is warranted. Someone could go to jail. Those with an interest will surely want to ask the company about this.

We further criticize the company for using cut-and-paste in the place of substantive updates and details on these exposures. We think this has created a dangerous complacency among investors.

Further, Hi-Tech Pharmacal, acquired in Apr-2014, had a confirmed, undisclosed SEC probe at the time it was acquired. Accounting problems at Hi-Tech were cited as a contributor to the non-reliance on financial warning Akorn issued in Mar-2015. We were early in warning of potential for problems with a report we wrote in Nov-2014, [What Kind of SEC Problem Did Akorn Inherit With its Acquisition of Hi-Tech Pharmacal?](#) This unsettling combination leaves you open to unexpected surprises.

Even though it's been running for a long time and the details/updates are lacking, we caution investors to remember that there is a reason the company keeps disclosing this investigation. Management believes it remains a material risk. We suggest you trust them on this. However, if you cannot independently understand why they reached that conclusion, you are effectively left with a company that has a known material risk that you cannot properly analyze and discount. We generally recommend investors avoid such scenarios.

Keep in mind that a public company can be involved in more than one SEC investigation at a time. We routinely recommend asking a company if there are any investigations beyond what is disclosed or reported in media stories. Further, since we know there was at least one investigation in the recent past, we recommend those with an interest ask Akorn Inc. what contact it has had with the SEC's Division of Enforcement in the past two years.

### [From the Probes Reporter Database:](#)

We filed our first FOIA request on this company in **Dec-2014**.

If we alert you to the existence of an undisclosed SEC investigation – or any response from the SEC – that means we filed a FOIA request on the company in question and have a response, in black-and-white on government letterhead, that supports our statement.

Below is the SEC response history for this company:

9-Dec-2014	FOIA Response	No SEC investigative records found.
15-Oct-2015	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
2-Nov-2015	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
1-Jun-2016	FOIA Response	No SEC investigative records found.
2-Jun-2016	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
8-Jun-2016	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
25-Jan-2017	FOIA Response	No SEC investigative records found.
24-May-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
16-Jun-2017	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
4-Jan-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
6-Apr-2018	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.

When research history is available in our database, we present it above so you can compare it to company disclosures. Other interpretative guidance and disclosures appear below.

As can be seen in the table above, at least once in the past the SEC cited the "law enforcement exemption" of the Freedom of Information Act (FOIA) as basis to deny the public's access to the detailed records we sought on this company. As a matter of law, the SEC is acknowledging some sort of investigative activity with this response. We filed an appeal with the SEC's Office of the General Counsel to challenge that response. In response to our latest appeal(s), the date(s) of which is/are also shown in the table above, the SEC stated, "We have confirmed with staff that releasing the withheld information could reasonably be expected to interfere with on-going enforcement proceedings."

While the SEC as a matter of course tells the public that an on-going investigation should not be construed as a finding of any wrongdoing, the public interest is understandably high in tracking these investigations and their outcome. In this case, our research shows these SEC proceedings are disclosed by **Akorn Inc.**

**Notable Disclosures:** We observe a lot of cut-and-paste is used in this company's disclosures (excerpts below) in place of actual updates on investigative activity that would be more useful to investors.

**Documents Acquired Under the Freedom of Information Act:** None in our library at this time.

**Supplemental Data:** Again, we observe a lot of cut-and-paste is used in this company's disclosures in place of actual updates on investigative activity that would be more useful to investors. We recommend investors insist the company provide them with more substantive updates.

**From the Akorn 10-K filed on 28-Feb-2018:**

The Chicago Regional Office of the Securities and Exchange Commission (SEC) is conducting an investigation regarding the previously disclosed restatement, internal controls and other related matters. Additionally, the United States Attorney's Office for the Southern District of New York (USAO) has requested information regarding these matters. Akorn has been furnishing requested information and is fully cooperating with the SEC and USAO.

**From the Akorn 10-K filed on 1-Mar-2017:**

The Chicago Regional Office of the Securities and Exchange Commission (SEC) is conducting an investigation regarding the previously disclosed restatement, internal controls and other related matters. Additionally, the United States Attorney's Office for the Southern District of New York (USAO) has requested information regarding these matters. Akorn has been furnishing requested information and is fully cooperating with the SEC and USAO.

**From the Akorn 10-Q filed on 4-Aug-2016 –**

The Chicago Regional Office of the SEC is conducting an investigation regarding the previously disclosed financial statement restatement, internal control weaknesses and other related matters. Additionally, the United States Attorney's Office for the Southern District of New York ("USAO") has requested information regarding these matters. Akorn has been furnishing requested information and is fully cooperating with the SEC and USAO.

**From the Akorn 10-Q filed on 2-Jun-2016 –**

The Chicago Regional Office of the Securities and Exchange Commission (SEC) is conducting an investigation regarding the previously disclosed restatement, internal controls and other related matters. Additionally, the United States Attorney's Office for the Southern District of New York (USAO) has requested information regarding these matters. Akorn has been furnishing requested information and is fully cooperating with the SEC and USAO.

**From the Akorn 8-K filed on 14-Jan-2016 –**

In addition, as previously disclosed, the Chicago Regional Office of the SEC is conducting an investigation regarding the restatement, internal controls and other related matters. Additionally, the United States Attorney's Office for the Southern District of New York ("USAO") has requested information regarding these matters. Akorn has been furnishing requested information and fully cooperating with the SEC and USAO. We could become subject to one or more government enforcement actions arising out of these inquiries.

**First disclosure of an SEC and US Attorney investigation, from the Akorn 8-K filed on 4-Nov-2015 –**

The Chicago Regional Office of the Securities and Exchange Commission (SEC) is conducting an investigation regarding the previously disclosed restatement, internal controls and other related matters. Additionally, the United States Attorney's Office for the Southern District of New York (USAO) has requested information regarding these matters. Akorn has been furnishing requested information and is fully cooperating with the SEC and USAO.

**From the Akorn 8-K filed on 17-Mar-2015 –**

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

On March 17, 2015, the Company issued a press release announcing that the Audit Committee, upon the recommendation of the Company's management, concluded that the previously issued financial statements contained in the Company's Quarterly Reports on Form 10-Q for the quarters ended June 30, 2014 and September 30, 2014 should not be relied upon because of an error in the financial statements as of and for the three and six month periods ended June 30, 2014, which then impacted the financial statements as of and for the nine month period ended September 30, 2014, and that those financial statements would be restated to make the necessary accounting adjustments.

On April 17, 2014, the Company completed its acquisition of Hi-Tech Pharmacal Co., Inc. ("Hi-Tech") for a total purchase price of approximately \$650.0 million. During the 2014 year-end audit process, an error was identified in the fair value allocation of assets acquired and liabilities assumed in connection with the acquisition of Hi-Tech, which resulted in an overstated chargeback reserve as of April 17, 2014. The error, which was identified on March 11, 2015, resulted from an

overstatement of Hi-Tech's chargeback reserve in connection with applying the acquisition method of accounting at the closing of the Hi-Tech acquisition.

The overstatement in the chargeback reserve was caused by a manual error made in preparing the data whereby there was a duplication of inventory units held by one customer utilized in the calculation of the reserve amount for Hi-Tech products at the acquisition date. The duplication resulted in an overstatement of chargeback reserves by approximately \$8.9 million for the opening balance sheet of Hi-Tech as of April 17, 2014. The chargeback reserve at the end of the quarter ended June 30, 2014 was then calculated correctly, resulting in the earlier overstated reserve amount being included in revenue during the quarter ended June 30, 2014. The correction of the error in the quarter ended June 30, 2014 resulted in a reduction of previously reported revenue by \$8.9 million, a reduction of previously reported pre-tax income by \$8.9 million and a reduction of previously reported net income, goodwill and retained earnings by \$5.6 million, for the Company's three and six month periods ended June 30, 2014.

The error was limited to the Company's financial results for the three and six month periods ended June 30, 2014, but the error did impact the Company's previously filed results for the nine months ended September 30, 2014 (which were filed in connection with the Company's Form 10-Q for the quarter ended September 30, 2014) and the Company's previously furnished preliminary results for the full year ended December 31, 2014 (which were furnished as part of the Company's Form 8-K on February 26, 2015 in connection with the Company's earnings announcement for the fourth quarter of 2014) because the second quarter results were included within those periods. The estimated impact of this error for the restated three and six month periods ended June 30, 2014 is to reduce basic and diluted net income per share by approximately \$0.05 per share. The estimated impact of this error for the restated nine month period ended September 30, 2014, and the year ended December 31, 2014, is to reduce both basic and diluted net income per share by approximately \$0.06 and \$0.05 per share, respectively.

The error and subsequent restatement is non-cash in nature and does not have an impact on the Company's cash and cash equivalents balances for any of the affected periods or the Company's liquidity or capital position

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### Independent Investment Research Focused on Public Company Interactions with the SEC.

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**Notes:** *New SEC investigative activity could theoretically begin or end after the date covered by the latest information in this report, which would not be reflected here. The SEC did not disclose the details on investigations referenced herein. All we know is that they somehow pertain to the conduct, transactions, and/or disclosures of the companies referenced above. Companies with undisclosed SEC investigations are maintained on our Watch List of companies with undisclosed SEC investigations.*

*The SEC reminds us that its assertion of the law enforcement exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security.*

**To learn more about our research process, including how to best use this information in your own decision-making, [click here](#).**

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