

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

## Confirmed, Undisclosed SEC Investigation

Watch List Status: Maintained on Watch List of Companies with Undisclosed SEC Investigations

### Signs of Multiple Undisclosed SEC Investigations Found

**24-May-2019 – Update:** Today news broke that the SEC was investigating Boeing for matters related to the 737 Max. We thought it timely to bring this older report to the attention of our clients. It has no added content or other updates. For more see Bloomberg, [Boeing Faces SEC Probe Into Disclosures About 737 Max Troubles](#), 24-May-2019

Clients are invited to contact us anytime, in total confidence, to discuss how to better assess the risks we identify here.

**Original Report:** An undisclosed SEC investigation is again confirmed. With new data reflected in this report, **Boeing Company remains on our Watch List** of companies with undisclosed SEC investigations. First response indicating an SEC probe was dated 14-Apr-2016. Ongoing enforcement proceedings confirmed five times since, most recently on 07-Dec-2018.

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.

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask Boeing Company, The what contact it has had with the SEC's Division of Enforcement in the past two years. Keep in mind that a public company can be involved in more than one SEC investigation at a time. As such, we routinely recommend asking a company if there are any investigations beyond what is disclosed or reported in media stories – or even in our research.

#### From the Probes Reporter Database:

We filed our first FOIA request on this company in **Jul-2012**.

Below is the SEC response history for this company:

31-Aug-2012	FOIA Response	No SEC investigative records found.
23-Jul-2013	FOIA Response	No SEC investigative records found.
20-Jun-2014	FOIA Response	No SEC investigative records found.
15-Apr-2015	FOIA Response	No SEC investigative records found.
10-Feb-2016	FOIA Response	No SEC investigative records found.

### Disclosure Insight®

Just how many undisclosed SEC investigations has Boeing been sitting on?

Until this report we were operating on the assumption the SEC was investigating Boeing for matters related to this *Bloomberg* story, published 11-Feb-2016 (behind their paywall): [Boeing to Face SEC Probe of Dreamliner and 747 Accounting](#). This would have been consistent with the responses we were receiving from the SEC.

But in Dec-2018, we received documents from an SEC investigation that closed in Jul-2018. There's not enough detail within the newly-released documents for us to know what it was about, or if it was something that would even matter to investors.

Here's the troubling part – Also in December, our access to other records was blocked as SEC enforcement proceedings were confirmed as ongoing. As we said above, just how many undisclosed SEC investigations does Boeing have?

-- John P. Gavin, CFA

14-Apr-2016	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
26-Apr-2016	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
3-Nov-2016	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
18-Nov-2016	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
30-May-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
30-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.
2-Jan-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
28-Mar-2018	Appeal Response	Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to records remains blocked.
23-Oct-2018	FOIA Response with Document(s)	Two-part response: 1) SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities"; and, 2) Documents released on separate, closed SEC probe(s) of this company. However, access to certain of these investigative records was denied.
7-Dec-2018	Appeal Response	Two-part appeal response: Existence of on-going SEC enforcement proceedings confirmed on appeal; Access to those records remains blocked. Appeal to try to access certain records (previously identified) from a closed, but separate SEC probe(s) of this company was also denied on grounds they are internal SEC documents.

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 undisclosed by **Boeing Company**.

**Notable Disclosures:** Repeated searches of this company's SEC filings, back to May-2014, found no clear disclosures of SEC investigative activity.

**Documents Acquired Under the Freedom of Information Act:** In Dec-2018, the SEC released 5 pages of records from an investigation that ended in Jul-2018. The material released is of little analytical value. Documents released include copies of a termination letter sent to the company as well as a one-page Case Closing Report dated 02-Jul-2018, with the heading,

“Matter Name: The Boeing Company.” The SEC also denied in full our access to a related 6-page Case Closing Recommendation. We have no other documents or information that would help the investor gauge the timing, duration, or scale of this now closed matter.

Below is an excerpt from the Case Closing Report released to us on the SEC investigation of Boeing that ended in Jul-2018.



SEC DIVISION OF ENFORCEMENT

Case Closing Report

As of: 07/02/2018

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**Matter No.:** LA-04678-A      **Matter Name:** The Boeing Company

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The undersigned has been designated by the Director of the Division of Enforcement to exercise delegated authority to terminate and close all investigations authorized by the Commission pursuant to Section 20 of the Securities Act of 1933 [15 U.S.C. 77f], Section 21 of the Securities Exchange Act of 1934 [15 U.S.C. 78u], Section 18 of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79r], Section 42 of the Investment Company Act of 1940 [15 U.S.C. 80a-41], and section 209 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-9].

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I hereby close this case, pursuant to delegated authority.

  
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 Signature  
 John W. Berry  
 Associate Regional Director  
 \_\_\_\_\_  
 Title  
 July 5 2018

*Editor’s Note: When the SEC denies access to records on closed SEC investigations, they are frequently blocking internal SEC documents known as “Opening and Closing Reports, including ‘Case Closing Recommendation,’ ‘Matter Under Inquiry Summary,’ ‘Investigation Summary,’ and/or similar documents and/or reports.” A Case Closing Report is merely the cover page for a report called a Case Closing Recommendation. A Case Closing Recommendation is the SEC’s report that tells you why an investigation was opened, what work was done, and the conclusions reached. To date, the SEC is adamant in its refusal to release even one word from its Case Closing Recommendations and similar documents, a practice for which we remain sharply critical of the agency.*

**Supplemental Data:** Worth noting, from Bloomberg, 11-Feb-2016 (behind their paywall): [Boeing to Face SEC Probe of Dreamliner and 747 Accounting](#)

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**Notes:** 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. 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.

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