

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

#### Multiple Undisclosed SEC Investigations Found

*An undisclosed SEC investigation is again confirmed.* The first Freedom of Information Act (FOIA) response indicating an SEC investigation was dated 14-Apr-2016. On-going enforcement proceedings now confirmed on appeal six times since, most recently on 24-Sep-2019. For this reason, **Boeing Company, The remains on our Watch List** of companies with confirmed, undisclosed SEC investigations. We have documents from earlier SEC investigative activity, summarized below

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. The timing of SEC responses to us suggests that **Boeing management may have known about SEC investigative activity since at least Apr-2016.**

#### Disclosure Insight®

**Just how many undisclosed SEC investigations has Boeing had in recent years? We found three.** We think the most recent matter (#1) is likely related to the 737 Max. With recent, high-visibility questions about the veracity of this management team regarding the same, we find it troubling to – yet again – find evidence of confirmed, but as-still undisclosed SEC investigative activity. You should too.

On **24-May-2019**, news broke that the SEC was investigating Boeing for matters related to the 737 Max. See [Bloomberg, Boeing Faces SEC Probe Into Disclosures About 737 Max Troubles](#), 24-May-2019.

At a time of the *Bloomberg* story, investors were already acclimated to bad news surrounding the 737 Max. There was little to lose had the company confirmed that the *Bloomberg* story was true. A related SEC probe would have likely have received little incremental reaction.

To be clear, recent SEC responses we received could be related to investigation(s) of Boeing that have nothing to do with the 737 Max. But if the most recent investigation we found does relate to the 737 Max, then Boeing management would be feeding a growing concern of both investors and the public; that is, that Boeing is keeping bad news hidden from them ... still.

A quick review of the history shows the following –

**Sep-2019:** Existence of on-going SEC enforcement proceedings officially confirmed on appeal (still #1). Separately, we also received 2 pages of records from an SEC investigation of Boeing that closed on 31-Jan-2019 (#2). There's not enough detail within these recently-released documents for us to know what it was about, or if it was something that would even matter to investors. But it was never disclosed. Summary appears below.

**24-May-2019:** *Bloomberg* story ran about the SEC investigating Boeing for matters related to the 737 Max.

**Dec-2018:** SEC enforcement proceedings were again confirmed as ongoing. This may have been the one that ended in Jan-2019 (still #2). This tells us there was at least one additional SEC investigation of Boeing at the time that was unrelated to one that had just ended in Jul-2018 (#3).

**Oct-2018:** We received 5 pages of records from an SEC investigation of Boeing that closed in Jul-2018 (#3). There's not enough detail within these documents for us to know what it was about, or if it was something that would even matter to investors. Again, this SEC investigation of Boeing was never disclosed. Excerpt appears below.

**Feb-2016:** Consistent with responses we were receiving from the SEC at the time, *Bloomberg* ran a story, [Boeing to Face SEC Probe of Dreamliner and 747 Accounting](#), published 11-Feb-2016 (still #3).

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

– John P. Gavin, CFA

Bringing this to a close, 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.

**Our full research history appears below**

### From the Probes Reporter Database

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

We filed our first FOIA request on this company in **Jul-2012**. Below is the notable 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.
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 officially 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 officially 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 officially 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 officially 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 officially 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.
6-Sep-2019	FOIA Response with Document(s)	Documents released on closed SEC probe(s) of this company. Access to certain other investigative records denied on same probe(s).
6-Sep-2019	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
24-Sep-2019	Appeal Response	Existence of on-going SEC enforcement proceedings officially 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 undisclosed by **Boeing**.

### Documents Acquired Under the Freedom of Information Act

**06-Sep-2019:** In a letter to us, the SEC said the following, "The search for responsive records has resulted in the retrieval of two pages of records, the termination letter and the case closing report, which we are providing to you. We are withholding the eight page case closing recommendation in full ..."

The termination letter, sent to Boeing on 31-Jan-2019, simply says the following –



- The SEC concluded the investigation of Boeing;
- It was not recommending an enforcement action;
- The letter "must in no way be construed as indicated the party has been exonerated or that no action may ultimately result from the staff's investigation."

**Oct-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 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 to better 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.

	<b>SEC DIVISION OF ENFORCEMENT</b>
	<b>Case Closing Report</b> As of: 07/02/2018
<hr/>	
<b>Matter No.:</b> LA-04678-A	<b>Matter Name:</b> 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. 77t], 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].	
<hr/>	
I hereby close this case, pursuant to delegated authority.	
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 Signature	
John W. Berry Associate Regional Director	
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Title	
July 4 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 almost always refuses to release its Case Closing Recommendations and similar documents, a practice for which we remain sharply critical of the agency.*

**Continued, next page**

## Notable Events and Disclosures

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

**24-May-2019:** News broke that the SEC was investigating Boeing for matters related to the 737 Max. For more see Bloomberg, [Boeing Faces SEC Probe Into Disclosures About 737 Max Troubles](#), 24-May-2019

**11-Feb-2016:** From Bloomberg, (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.

**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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