

Brookfield Asset Management: An Unanalyzable Black Box of Risk With US & Canadian Regulators Lurking in the Background



Disclosure Insight™ reports provide commentary and analysis on public company interactions with investors and with the SEC. They are heavily reliant on our expertise with using the Freedom of Information Act.

Brookfield Asset Management – BAM

P.R.'s Perspective: In our opinion, companies like Brookfield Asset Management are best viewed as black boxes of accounting pixie dust. The capital structure is amazingly complex and constantly changing. This renders the company unanalyzable, if not prone to manipulation. We found a new undisclosed SEC probe. Prior criminal exposure appears unresolved. Is a company with this risk profile really worth having in your portfolio?¹

The Facts: SEC documents released to us confirm company statements that an earlier SEC probe ended in Jun-2015. However, the SEC also confirmed enforcement proceedings were on-going as of 04-Sep-2015.

Again, the SEC did release documents from the matter which ended in Jun-2015. However, since the SEC does not release documents on open matters, it appears Brookfield has a separate, unresolved SEC probe it's not disclosed to investors.

¹ Those with an interest may also find it worthwhile to read the Mar-2013 report by Southern Investigative Research Foundation's Roddy Boyd, "[The Paper World of Brookfield Asset Management](#)". While we cannot vouch for the accuracy of that work, or its author, it is nonetheless worth considering.

Separately, we also observe Brookfield engages in a steady flow of deals and financial engineering activities. Recent headlines that give a taste of this will be presented later in this report along with our opinion as to why that should be of concern to investors.

Documents recently acquired² by us from the SEC show four things –

1. In Jun-2013, the [Royal Canadian Mounted Police's \(RCMP\) "Sensitive and International Investigations" unit](#) asked the SEC for access to the files it had compiled on Brookfield. This was the same matter that the SEC ended in Jun-2015. Though based in Toronto, investigations by Canadian authorities were not referenced in recent disclosures made by Brookfield. Only investigations by the SEC, DOJ, and Brazilian authorities were disclosed.
2. The US Department of Justice also requested SEC files on Brookfield on 30-Sep-2014.
3. The SEC gave us a copy of the letter it sent to Brookfield on 26-Jun-2015, notifying it the investigation into Brookfield had ended. We do not have data, nor could we find company disclosures, to tell us the status of the RCMP or the DOJ investigations cited above.
4. In a letter to us dated 04-Sept-2015, the SEC confirmed this company's involvement in on-going enforcement proceedings. This appears unrelated to the matter that the SEC told the company was closed in Jun-2015. It's also undisclosed.

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² All documents referenced here are available to our premium subscribers. They are posted with this report at our website, www.probesreporter.com.

From the Brookfield Asset Management 6-K filed on 13-Aug-2015:

Governmental Investigations and Anti-Bribery and Corruption – Update

The increased global focus on anti-bribery and corruption enforcement may lead to more governmental investigations, audits and inquiries, both formal and informal in this area, the results of which cannot be predicted. For example, in 2012 we were notified by the SEC that it was conducting an anti-bribery and corruption investigation related to a Brazilian subsidiary of ours that allegedly made payments to certain third parties in Brazil and those payments were, in turn, allegedly used, with our knowledge, to pay certain municipal officials to obtain permits and other benefits. The U.S. Department of Justice (“DOJ”) opened an investigation in 2013. A civil action against our Brazilian subsidiary by a public prosecutor in Brazil has been ongoing since 2012. All involved have denied the allegations. The SEC and DOJ sought information from us and we cooperated with both authorities in this regard. In 2012, a leading international law firm conducted an independent investigation into the allegations, and based on the results of that investigation we have no reason to believe that our Brazilian subsidiary or its employees engaged in any wrongdoing. By way of update, in June 2015 the SEC staff informed us in writing that it concluded its investigation and, based on the information it has to date, does not intend to recommend an enforcement action against us. We hope to resolve any remaining outstanding matters in due course and do not expect that any legal outcome will be financially material to the company.

Analyst Observations: In our opinion, companies like Brookfield Asset Management are best viewed as black boxes of accounting pixie dust.

1. **The steady deal flow and accompanying financial engineering effectively renders Brookfield unanalyzable.** Of course there are real assets here. A lot of them. We neither minimize nor deny that. But there are simply too many moving parts, too many opportunities for management to play with the numbers. This makes the risk of an undisclosed SEC probe, and potentially lingering criminal probes, particularly problematic.

2. **It’s troubling to imagine the RCMP was, or is, investigating Brookfield and the company chose not to disclose it.** That, of course, assumes the company even knew, or knows about it. They knew about the SEC and DOJ probes, and they are in the US. As a Canadian company, it’s hard to imagine they were unaware the RCMP was looking into the company as well.
3. **There’s danger the DOJ and RCMP investigations could be on-going.** Companies love to tell people their investigations are over. But the Aug-2015 6-K only speaks to the SEC’s probe having ended. Since the RCMP and DOJ would be a criminal exposures, and could be lingering, we strongly recommend those with an interest ask the company about it.
4. **Brookfield makes us think of General Electric ... and Enron.** Long ago we covered two companies known for possessing earnings black boxes at the time: General Electric and Enron. As General Electric proved for years with its own financial services black box, this isn’t necessarily a bad thing for investors. Unfortunately, investors in the former Enron, also known to some as an unanalyzable black box (including us), had a different experience.
5. **Lastly, Brookfield illustrates well why we say – again and again – investors should always ask if there is more than one SEC probe at any given time.** Apparently, with Brookfield, there is, and they haven’t bothered to tell you about it. That’s not exactly confidence inspiring.

Supplemental Data:

A Steady Stream of M&A and Financial Engineering Related Headlines³ at Brookfield –

- 10-Nov-2015: OAS SA, a Brazilian builder seeking to emerge from bankruptcy protection, was reported to agree to the sale of its share in toll-road owner Invepar to Brookfield for \$356 Million
- 08-Nov-2015: Brookfield Asset Management shelved a \$6.5 billion buyout agreement with Asciano (a large Australian port and rail company) and said it will launch a formal takeover offer instead.

³ Source: Company press releases and assorted financial websites.

- 07-Oct-2015: Brookfield Asset Management to Create Brookfield Business Partners (BBP)
- 02-Oct-2015: Brookfield Completes CDN\$250 Million Preferred Share Issue
- 17-Aug-2015: Brookfield Completes Acquisition of GrafTech
- 11-Aug-2015: GrafTech Announces Completion of \$150 Million Preferred Equity Investment
- 11-Aug-2015: GrafTech Receives Final Regulatory Approval for Brookfield Investment and Tender Offer
- 10-Aug-2015: Brookfield Asset Management Announces Commencement of Normal Course Issuer Bid for Preferred Shares
- 07-Aug-2015: Brookfield Affiliate Completes Acquisition of Associated Estates for \$28.75 per Share in Cash
- 05-Aug-2015: Associated Estates Shareholders Approve Merger with Brookfield Affiliate
- 06-Jul-2015: Expiration Date of Tender Offer for GrafTech International Ltd. Shares Extended to July 28, 2015
- 01-Jul-2015: Canada's Brookfield Bids \$6.8B for Australian Logistics Firm Asciano
- 29-May-2015: Brookfield Said in Talks to Acquire Blackstone's Center Parcsat
- 19-May-2015: Brookfield Asset Management Announces Renewal of Normal Course Issuer Bid
- 18-May-2015: GrafTech International (GTI) Stock Gains on Brookfield Asset Management Offer
- 06-May-2015: Brookfield Seeks to Raise \$21 Billion to Buy Out-of-Favor Assets
- 04-May-2015: Brookfield Johnson Controls to Become Brookfield Global Integrated Solutions
- 28-Apr-2015: Brookfield Asset Management Announces Exercise of Underwriters' Over-Allotment Option

[To learn more on our process and what our findings mean, click here](#)

Notes: The SEC did not disclose the details on investigations referenced above. 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 this latest information which would not be reflected here.

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