

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

Quick Take: Maintained on Watch List. The first Freedom of Information Act (FOIA) response indicating an SEC investigation was dated 29-Jan-2020. On-going enforcement proceedings now confirmed on appeal two times since, most recently on 14-Dec-2020. We have documents from a 2016 SEC probe.

An undisclosed SEC investigation is again confirmed. We filed our first FOIA request on this company in **May-2012**. Documents from earlier SEC investigative activity are summarized below. Here is our more recent research history –

11-Aug-2017	FOIA Response	No SEC investigative records found.
21-Sep-2018	FOIA Response	No SEC investigative records found.
29-Mar-2019	FOIA Response	No SEC investigative records found.
29-Jan-2020	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
19-Mar-2020	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
8-Oct-2020	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
14-Dec-2020	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.

Clients are invited to contact us anytime, in total confidence, to discuss the data, documents, and/or risks we identify here.

Disclosure Insight®

This section offers analysis and opinion regarding the exposure(s) we identify in this report.

The timing of SEC responses to us suggests that **Salesforce.com management may have known about an SEC probe since at least Jan-2020.**

In presence of an undisclosed SEC investigation, we view any of the following as potentially related –

1. Restatements or accounting problems.
2. Problems with disclosures.
3. Departures / changes in key executive(s).
4. Delayed or amended filings.
5. Missing earnings expectations.
6. High stock price volatility.
7. Audit committee actions.
8. Change of auditor.
9. Cancels or stops having analyst events.
10. Dodges questions or only accepts via email.
11. Controversy enough to draw attention.
12. Negative news stories or analyst reports.
13. Registrations taking too long or pulled.
14. Larger-than-life CEO and/or senior executives.
15. Company does things inconsistent with economic reality.

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask Salesforce.com what contact it 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.

– John P. Gavin, CFA

Documents Acquired Under the Freedom of Information Act

Regarding the Current Warning –

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.

As can be seen in the table above, at least once in the past the SEC cited the "law enforcement exemption" of the 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 Division of Enforcement staff that the investigation from which you seek records is still active and ongoing."

Apr-2016: SEC releases 4 pages of analytically-rich records from a 2014 SEC investigation into, among other items, "How Salesforce determined that its four core service offerings – Sales Cloud, Service Cloud, Marketing Cloud, and Salesforce Platform – are not operating segments."

Relative to this investigation, the SEC also said, "... we are withholding the Matter Detail Report which contains the investigation closing and opening narratives."

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.

Notable Events and Disclosures

Repeated searches of this company's SEC filings, back to May-2018, found no clear disclosure of SEC investigative activity.

Probes Reporter research provides data, commentary, and analysis on public company interactions with investors and with the SEC. Our work is heavily reliant on company disclosures and our expertise in using the Freedom of Information Act.

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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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