

## Disclosure Games®

### The SEC Investigated Google in 2016-2017 for Click Measurement, Invalid Traffic on Google's Advertising Network

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

#### **Documents point to at least five undisclosed SEC investigations of Google since 2011.**

**Summary and Opinion:** In Feb-2016, the SEC issued a formal order of investigation "In the Matter of Google, Inc.", which went into areas investors and advertisers would almost certainly consider material. The investigation, which looked back as far as 2010, examined potential fraud involving click measurement and/or invalid traffic on Google's advertising network. Though formal, and appearing to last nearly two years (we don't know exactly when it started), the investigation was never disclosed. It ended in Nov-2017 without an enforcement action taken.

Documents in our archive show that Alphabet/Google, no stranger to SEC investigations, is also something of a shy bunny when it comes to disclosing them to investors. We have documents on five of them now, dating back to 2011. The fact we now have some meaningful – and analytically troubling – color on the most recent undisclosed SEC investigation we know about, one cannot wonder if Alphabet / Google will ever disclose an SEC investigation? The record of not disclosing such things suggests that if the company ever does disclose an SEC probe, it should absolutely be taken as a serious risk.

The following is from the Feb-2016 formal order from the SEC investigation of Google –

The Commission has information that tends to show that **from at least 2010:**

A. In possible violation of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Google, its officers, directors, employees, partners, parents, subsidiaries, and/or affiliates and/or other persons or entities, directly or indirectly, in the offer or sale or in connection with the purchase or sale of certain securities, may have been or may be employing devices, schemes, or artifices to defraud, obtaining money or property by means of untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were or are made, not misleading, or engaging in transactions, acts, practices or courses of business which operated, operate, or would operate as a fraud or deceit upon any person. **As part of or in connection with these activities, such persons or entities, directly or indirectly, may have been or may be, among other things, making false statements of material fact or failing to disclose material facts concerning, among other things, click measurement and/or invalid traffic on Google's advertising network.**

For those inclined to point out that Google's SEC investigation(s) ended without an enforcement action, we point out that is the case with the majority of them. Fraud is hard to prove and the government has to pick its fights carefully. Having said that, even without an enforcement action, SEC investigations can bring about changes that can hurt company performance long after the investigation ends. That's why it's so important to go back later and follow-up on what you can find out after the fact.

We have documents in our library on five closed SEC probes of Google. None were disclosed. This includes the following –

- In 2018, 32 pages of documents were released from the 2016-17 SEC investigation of Google summarized above. The SEC withheld in full access to a six-page Case Closing Recommendation from this investigation. Per the SEC, Google made 15 requests for confidential treatment of documents related to this investigation, "covering a date range from March 2016 through September 2017 with an estimated page count of 4,325."
- In 2016, the SEC released a Case Closing Report titled "Public Company Segment Reporting Practices". This matter ended 14-Oct-2016.
- In 2015, we obtained Case Closing Reports on two separate investigations of Google. The first was dated 01-Apr-2014, the second was dated 08-Oct-2014. No other records or information was provided on these two probes. However, when these records were released, the SEC also denied our access to other records as they pertained to ongoing enforcement activities at the time.
- In 2013, we obtained an SEC letter sent to Google in Oct-2011 informing the company an SEC inquiry was ending without an enforcement action. We also have a related Case Closing Report dated Jan-2012. We were denied access to 22 pages of records on this probe.

Unfortunately, aside from knowing with certainty when some of Google/Alphabet's undisclosed SEC probes from recent years ended, for nearly all of the investigations we found, the documents released by the SEC tell us virtually nothing about what the SEC was investigating at the time.

As of Apr-2018, an SEC response indicated no recent investigative activity was found at Alphabet/Google. We will refresh this research in the spring of 2019.

*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.*

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*“Disclosure Games”*® is a term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure.

If we alert you to existence of an undisclosed SEC probe, that means we filed a Freedom of Information Act (FOIA) request with the SEC on the company in question and have a response, in black-and-white, on government letterhead that supports our statement. The only thing we know at this time is that the probe(s) somehow pertains to the conduct, transactions, and/or disclosures of the companies referenced.

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 probes.

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.

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