

Disclosure Games®

Court Filings Reveal Troubling Details on Tech Data's Ongoing SEC Probe

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"The SEC has requested information from the Company, and the Company intends to cooperate with such request."

-- The essence of Tech Data's disclosures on a formal, multi-subpoena SEC probe it knew about since March 2013.

Summary and Opinion: Recently acquired court documents reveal a number of disturbing, and otherwise undisclosed, details about Tech Data's SEC probe that has been running for almost five years and relates to a restatement of 2009 - 2013 results. Based upon the court documents we present here, interwoven with the company's disclosure history, it is clear to us that under the leadership of Chairman/CEO Robert Dutkowsky, the management team repeatedly made the active decision to keep significant – we say material – information from investors about Tech Data's SEC exposure.

March 2018 will mark five years since Tech Data first announced a multi-year restatement and the SEC having started an investigation. In Tech Data's own words, court records show the company's SEC probe started the day after a multi-year restatement was announced in Mar-2013 and rapidly became formal. In the first year alone three subpoenas were sent to the company and an array of company executives submitted to SEC interviews and/or provided testimony to investigators. None of these details have ever been disclosed in official company filings.

In all this time, no substantive detail or update has been provided by the company about its SEC probe – it doesn't even refer to it as a probe, inquiry, or investigation. We believe this has led to complacency among investors,

which is what any management worth their reserved parking spots wants regarding the bad stuff.

We still do not know the particulars on what took place after those early days. Tech Data spent \$76.6 million in restatement related expenses in 2014 - 2016, which included legal, accounting, and consulting fees. This is well above what we normally see, but we don't know why. Most importantly, we don't know why it is taking so long to resolve. The last point, why it is taking so long to resolve, is the greatest source of uncertainty, if not potential danger for investors in the near-term.

Here's why – The company otherwise did an excellent job of detailing particulars on the restatement itself. But that was back in 2014. This begs the question of what else is going on to cause the SEC investigation to last this long? We'd expect it to be closed by now. Still, given how long it's been running, we would not be surprised if the Tech Data SEC probe does end soon. The company may give it prominence and investors may cheer. They shouldn't.

There's a lasting harm comes from the uncertainty introduced by a management that's now been found to have kept significant information from investors. Those subtle, but important, factors could rightly hurt valuation.

Perhaps Tech Data management and their attorney-enablers thought they were being clever; that is, they met an obligation to disclose a material risk, but did so in a manner that would also lull investors into a state of complacency through the absence of detail. Unfortunately, we see that gambit used far too often by public companies. But in this case, the company got caught while the probe remains ongoing. Unless SEC-related disclosures dramatically improve, we'd steer clear.

Facts of Interest or Concern:

Tech Data is suing its insurers over failure to reimburse the company for “millions of dollars” spent responding to an SEC probe into accounting errors. While not uncommon for a company to spend “millions of dollars” on an SEC probe, it’s not trivial either. TECD has reported that it spent \$76.6 million on restatement-related expenses.

Later in this report we present the entire disclosure history on Tech Data’s SEC probe, along with key highlights excerpted from a complaint the company filed in a lawsuit against two of its insurers refusing to pay claims made by the company to reimburse it for expenses related to the investigation.

The investigation goes back to 21-Mar-2013, when Tech Data announced that it would restate some or all of its previously issued quarterly and audited financial statements for the fiscal years 2011 and 2012, and for some or all of the quarters of fiscal year 2013. An 8-K filed 30-Jan-2014 indicated that the restatement would include 2009 and 2010 as well.

Initial disclosure from an 8-K filed 01-Apr-2013:

The Audit Committee has commenced an investigation into the circumstances that gave rise to the need to restate the Company’s financial statements and has retained independent counsel to assist in the investigation. **The SEC has requested information from the Company, and the Company intends to cooperate with such request.**

Most recent disclosure, from a 10-Q filed 29-Nov-2017:

As previously reported, the SEC has requested information from the Company with respect to the restatement of certain of our consolidated financial statements and other financial information from fiscal 2009 to 2013, and the Company has cooperated with the SEC’s request for information.

As can be seen above, the language in the original disclosure closely resembles the language made every quarter since the first disclosure.

Even with the formal order; the multiple subpoenas; the array of executives getting hauled before SEC investigators for interviews or testimony; the expansion of the restatement in Jan-2014; and, the significant expense

incurred by the company to deal with the SEC probe, the related disclosures have been the same: vague, bland, unchanged, and lacking detail.

Robert Dutkowsky is Tech Data’s Chairman/CEO. He was Tech Data’s CEO and board member since Oct-2006. In Jun-2017, he was elected Chairman.

Our Take: One of the greatest challenges we face is convincing investors that any time a company discloses an SEC probe, it is because management deemed the exposure poses a material risk and, therefore, you should treat it that way. This is true no matter the soothing words from management and analysts’ lips at the time of first disclosure, or the lack of update or follow-up after. It is also true when a company like Tech Data uses the same bland disclosure about an SEC probe for almost five years running, without even a hint of change or update.

Always, always, always a disclosed SEC probe introduces uncertainty into the equation that must be thoroughly assessed. Time and again we see investors ignore this risk – a risk hiding in plain sight – at their own peril.

A risk disclosed is not the same as a risk discounted. When a company’s disclosures, or answers to related questions, don’t provide the answers needed to conduct a credible and independent analysis of an SEC probe – or other material risk – then we recommend investors find their opportunity elsewhere.

Again, companies disclose these things because they judge them sufficiently material an exposure they have to be disclosed. You should trust their judgement on this, even if they won’t, or pretend they cannot, tell you why they reached that conclusion.

Milestones in the Investigation Timeline

Tech Data is suing two of its insurers over failing to reimburse the company for “millions of dollars” spent responding to an SEC probe into accounting errors.

In Dec-2016, Tech Data filed a lawsuit against Travelers Casualty and Surety Company of America, and Zurich American Insurance Company. Each insurance company provided \$10 million of coverage to Tech Data, with each policy covering the period 01-Feb-2013 to 01-Feb-2014.

Tech Data brought the suit asserting, per the complaint, “the Insurers refuse to reimburse Tech Data for attorneys’ fees Tech Data and its officers, directors and employees have incurred and are continuing to incur in connection with an investigation conducted by the U.S. Securities and Exchange Commission (“SEC”).”

The following is a combined timeline of items from the court filings interwoven with company disclosures.

21-Mar-2013: Tech Data announced that it would restate some or all of its previously issued quarterly and audited financial statements for the fiscal years 2011 and 2012, and for some or all of the quarters of fiscal year 2013. The purpose of the restatement was to correct inaccuracies primarily related to vendor accounting within a Tech Data subsidiary in the United Kingdom, Computer 2000 Distribution Ltd.

22-Mar-2013: The SEC’s Division of Enforcement first contacted Tech Data regarding the financial restatement and indicated that the SEC planned to open an investigation into possible accounting irregularities at Tech Data.

28-Mar-2013: The SEC’s investigation becomes formal, with the company’s external counsel receiving a copy of the formal order on 05-Apr-2013.

01-Apr-2013: Tech Data announces a delay to filings its fiscal 2013 10-K.

10-Apr-2013: Tech Data’s Vice President of Corporate Accounting is interviewed by the SEC via telephone.

16-May-2013: Tech Data receives an SEC subpoena seeking “the production of documents related to the accounting of Tech Data’s U.K. subsidiary.”

10-Jun-2013: Tech Data filed an NT 10-Q, indicating it is unable to timely file this quarterly report.

14-Jun-2013: Tech Data receives a second subpoena from the SEC seeking, “the production of various budget and forecast reports, as well as two categories of documents related to communications of certain Tech Data officers.”

In response to the 14-Jun-2013 subpoena, Tech Data made numerous productions to the SEC of documents responsive to the June 14 subpoena, including on 03-Jul-2013 and 18-Jul-2013, and 08-Oct-2013.

02-Aug-2013: Tech Data announced the resignation of Murray Wright, President, the Americas, effective immediately.

09-Sep-2013: Tech Data filed an NT 10-Q, indicating it is unable to timely file this quarterly report.

10-Dec-2013: Tech Data filed an NT 10-Q, indicating it is unable to timely file this quarterly report.

30-Jan-2014: Tech Data files an 8-K indicating it will file its 10-K for the fiscal year ended 31-Jan-2013. It indicates outstanding 10-Qs will be filed prior to 28-Feb-2014. The company also indicated it was going to expand the period covered by the original restatement from 2011-2013 to 2009-2013. Per the 8-K –

As described in the Company’s Current Report on Form 8-K filed with the SEC on March 21, 2013, the Company announced that it would restate some or all of its previously issued quarterly and audited annual financial statements for the fiscal years 2011 and 2012, and some or all of the quarters of fiscal year 2013. In addition to these periods, the Annual Report will include restated selected financial data for fiscal years 2009 and 2010

05-Feb-2014: Tech Data filed its 10-K for the fiscal year ended 31-Jan-2013. It restated certain consolidated financial statements and other financial information for fiscal years ending 31-Jan-2009, 2010, 2011 and 2012. This same day the company also issued a press release announcing conclusion of an independent investigation by the Audit Committee.

25-Feb-2014: In three delayed 10-Q filings, investors get an indication of the scale of the investigative/remedial activity related to restatements. From the 10-Q –

Restatement Expenses

Restatement expenses primarily include legal and accounting fees associated with the investigation, as well as third party consulting fees to support the Supplemental Procedures and other activities in connection with the restatement. During the first quarter of fiscal 2014, the Company has incurred approximately \$3.0 million of restatement expenses which are recorded in "restatement expenses" in the accompanying Consolidated Statement of Income. The Company will incur a total of approximately \$54

million to \$56 million of restatement expenses during the entire fiscal year ended January 31, 2014.

We again see language talking around, but not specifically saying the company has an SEC investigation –

In connection with the restatement of our prior financial statements, the Securities and Exchange Commission ("SEC") has requested information from the Company with respect to these matters. The Company is cooperating with the SEC's request for information.

09-Apr-2014: In a 10-K we again see language talking around, but not specifically saying the company has an SEC investigation –

The SEC has requested information from the Company with respect to the restatement of certain of our consolidated financial statements and other financial information from fiscal 2009 to fiscal 2013, and the Company is cooperating with the SEC request. See Item 3, "Legal Proceedings." This pending SEC request for information and other potential proceedings could result in fines and other penalties. The Company has not reserved any amount in respect of these matters in its consolidated financial statements.

06-Jun-2014: In a 10-Q we again see language talking around, but not specifically saying the company has an SEC investigation. We also get an update on expenses incurred –

The SEC has requested information from the Company with respect to the restatement of certain of our consolidated financial statements and other financial information from fiscal 2009 to 2013 and **the Company has cooperated** with the SEC's request for information.

During the three months ended April 30, 2014 and 2013, the Company incurred approximately \$12.2 million and \$3.0 million of restatement-related expenses, respectively, which are recorded in "restatement-related expenses" in the Consolidated Statement of Income.

27-Jun-2014: Tech Data receives a third SEC subpoena. This one sought documents on employee communications in both the U.S. and U.K. Tech Data made a series of

productions to the SEC of documents responsive to the 27-Jun subpoena. Production dates were not indicated.

At dates unspecified, Tech Data also said the SEC requested additional documents and information concerning Tech Data's U.K. personnel in 2014, 2015 and 2016 which the company provided.

Also at dates unspecified, Tech Data employees were either interviewed or gave testimony in connection with the SEC Investigation.

In connection with the SEC Investigation, Tech Data also said it "incurred substantial legal fees" related to the SEC investigation which it said it has already paid.

Though it appears the SEC probe of Tech Data remains ongoing as its latest 10-Q filed 29-Nov-2017, the insurance coverage for which the company is suing its insurance carriers pertains to policies covering the period 01-Feb-2013 to 01-Feb-2014. As a result, the company made no further reference in its court filings to what took place in its SEC probe since.

Company disclosures regarding the SEC probe have remained analytically bereft of analytically-meaningful content the entire time.

Below we provide an unedited excerpt from the original language appearing in the complaint filed by Tech Data.

After that we include the company's full disclosure history on the SEC probe from the time it was first disclosed in Apr-2013, to the most recent disclosure in Nov-2017.

Supplemental Data – As Stated in the Court Filings

In Dec-2016, Tech Data filed a lawsuit against Travelers Casualty and Surety Company of America, and Zurich American Insurance Company. Each insurance company provided \$10 million of coverage to Tech Data, with each policy covering the period 01-Feb-2013 to 01-Feb-2014.

Tech Data brought the suit asserting, per the complaint, "the Insurers refuse to reimburse Tech Data for attorneys' fees Tech Data and its officers, directors and employees have incurred and are continuing to incur in connection with an investigation conducted by the U.S. Securities and Exchange Commission ("SEC")."

The following, points B, 26-37, are drawn directly from the complaint Tech Data filed against its insurers on 08-Dec-2016.

B. The SEC Investigation

26. On or around March 21, 2013 Tech Data announced that it would restate some or all of its previously issued quarterly and audited financial statements for the fiscal years 2011 and 2012, and for some or all of the quarters of fiscal year 2013.

27. The purpose of the restatement was to correct inaccuracies primarily related to vendor accounting within a Tech Data subsidiary in the United Kingdom, Computer 2000 Distribution Ltd.

28. On March 22, 2013, the SEC's Division of Enforcement first contacted Tech Data regarding the financial restatement and indicated that the SEC planned to open an investigation into possible accounting irregularities at Tech Data. That same day, Tech Data received SEC Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena."

29. On April 5, 2013, Tech Data received, through its counsel Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb"), an Order Directing Private Investigation and Designating Officers to Take Testimony, in the matter before the SEC styled In the Matter of Tech Data Corp., File No. HO-12068, dated March 28, 2013 (the "SEC Order"). The SEC Order alleged that Tech Data and its officers, directors, employees, partners, subsidiaries and/or affiliates may have violated statutes, rules and regulations under the Securities Act of 1933 and the Securities Exchange Act of 1934. (The SEC Order, the SEC subpoenas issued pursuant to the SEC Order, and related SEC interviews of Tech Data's officers, directors and/or employees are collectively referred to herein as the "SEC Investigation.")

30. On or around April 10, 2013, Tech Data, through its insurance broker Willis Americas Administration, Inc. ("Willis"), provided notice of the SEC Order to the Insurers.

31. On April 10, 2013, the SEC's Division of Enforcement conducted an informal telephone interview of Tech Data's Vice President of Corporate Accounting. Cleary Gottlieb

prepared the witness for and represented him in the interview.

32. Pursuant to the SEC Order, on May 16, 2013, the SEC Division of Enforcement served a document subpoena on Tech Data requiring, "as part of the investigation," the production of documents related to the accounting of Tech Data's U.K. subsidiary (the "May 16 Subpoena"). Tech Data, through its broker Willis, provided notice of the May 16 Subpoena to the Insurers on or around May 16, 2013. Tech Data, with the assistance of counsel, made numerous productions to the SEC of documents responsive to the May 16 Subpoena, including on May 30 and June 6, 2013.

33. Pursuant to the SEC Order, on June 14, 2013 the SEC's Division of Enforcement served a second document subpoena on Tech Data requiring, "as part of the investigation," the production of various budget and forecast reports, as well as two categories of documents related to communications of certain Tech Data officers (the "June 14 Subpoena"). Tech Data provided notice of the June 14 Subpoena to the Insurers on or around June 14, 2013. Tech Data, with the assistance of counsel, made numerous productions to the SEC of documents responsive to the June 14 Subpoena, including on July 3 and 18, and October 8, 2013.

34. On February 5, 2014, Tech Data filed its Annual Report on Form 10-K for the fiscal year ended January 31, 2013. This Annual Report restated certain consolidated financial statements and other financial information for fiscal years ending January 31, 2009, 2010, 2011 and 2012.

35. Pursuant to the SEC Order, on June 27, 2014 the SEC's Division of Enforcement served a third document subpoena on Tech Data, requesting documents on employee communications in both the U.S. and U.K. ("June 27 Subpoena"). Tech Data provided notice of the June 27 Subpoena to the Insurers on or around June 27, 2014. Tech Data, with the assistance of counsel, made a series of productions to the SEC of documents responsive to the June 27 Subpoena.

36. The SEC requested additional documents and information concerning Tech Data's U.K. personnel in 2014, 2015 and 2016. With the assistance of counsel, Tech Data provided additional documents and information. Counsel also prepared several witnesses for and represented them in additional interviews or testimony in connection with the SEC Investigation.

37. In connection with the SEC Investigation, Tech Data and certain past and present officers, directors and/or other “Insured Persons” incurred substantial legal fees. Tech Data paid legal fees on behalf of certain officers, directors and/or “Insured Persons.”

End of the unedited excerpt from the original language appearing in the complaint filed by Tech Data.

Supplemental Data – From the SEC Filings

From the 8-K filed 1-Apr-2013:

The Audit Committee has commenced an investigation into the circumstances that gave rise to the need to restate the Company's financial statements and has retained independent counsel to assist in the investigation. The SEC has requested information from the Company, and the Company intends to cooperate with such request.

From the 10-K filed 5-Feb-2014:

The SEC has requested information from the Company with respect to the restatement of our prior financial statements, and the Company is cooperating with the SEC request. See Item 3, “Legal Proceedings.” This pending SEC request for information and other potential proceedings could result in fines and other penalties. The Company has not reserved any amount in respect of these matters in its consolidated financial statements.

Under Legal Proceedings in the 10-K filed 5-Feb-2014:

In connection with the restatement of our prior financial statements, the SEC has requested information from the Company with respect to these matters. The Company is cooperating with the SEC's request for information.

From 3 delayed 10-Qs filed 25-Feb-2014, we see language talking around, but not specifically saying the company has an SEC investigation:

In connection with the restatement of our prior financial statements, the Securities and Exchange Commission (“SEC”) has requested information from the Company with respect to these matters. **The Company is cooperating** with the SEC's request for information.

From the 10-Ks filed 9-Apr-2014, 26-Mar-2015, 24-Mar-2016, 30-Mar-2017:

The SEC has requested information from the Company with respect to the restatement of certain of our consolidated financial statements and other financial information from fiscal 2009 to fiscal 2013, and the Company is cooperating with the SEC request. See Item 3, “Legal Proceedings.” This pending SEC request for information and other potential proceedings could result in fines and other penalties. The Company has not reserved any amount in respect of these matters in its consolidated financial statements.

Under Legal Proceedings in the 10-Ks filed 9-Apr-2014, 26-Mar-2015, 24-Mar-2016, 30-Mar-2017:

The SEC has requested information from the Company with respect to the restatement of certain of our consolidated financial statements and other financial information from fiscal 2009 to 2013. The Company is cooperating with the SEC's request for information.

From the 10-Qs filed 6-Jun-2014, 2-Sep-2014, 5-Dec-2014, 4-Jun-2015, 2-Sep-2015, 3-Dec-2015, 2-Jun-16, 31-Aug-2016, 30-Nov-2016, 8-Jun-2017, 7-Sep-2017, 29-Nov-2017, repeated in form and substance:

The SEC has requested information from the Company with respect to the restatement of certain of our consolidated financial statements and other financial information from fiscal 2009 to 2013 and the Company has cooperated with the SEC's request for information.

- Probes Reporter



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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.

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