

Disclosure Games®

Take a Closer Look at Under Armour's Abrupt CFO Departure

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.

"In our experience, conduct of the sort exhibited by [executive's name redacted] has sometimes been connected to the unraveling of embezzlement, self-dealing, or undisclosed related party transactions."

-- From an SEC letter sent to Francesca's (FRAN) counsel in May-2016 after the Chairman/CEO abruptly resigned.

Summary and Opinion: Last summer we warned of an undisclosed SEC probe at Under Armour (UA). We now wonder if it somehow relates to the abrupt CFO departure in Jan-2017 and repeated earnings misses since.

Documents we obtained concerning an SEC probe of unrelated Francesca's Holdings, which experienced the abrupt departure of a senior executive in May-2016, show that the SEC thinks about fraud-type issues when these sudden departures occur. With Under Armour already showing the signs of a troubled company, prudence suggests investors at least consider the risk. It's time to go beyond the outlook for sneaker and apparel sales.

Just as the SEC does in these cases, you need to dig into the particulars of the CFO's abrupt departure. Almost universally, there is more to the "personal reasons" rationale cited for a senior executive's sudden departure. Your goal is to look for any connection that might exist between Under Armour's CFO departure in Jan-2017 and undisclosed SEC activity we found last summer.

Later in this report we suggest questions investors should ask. The Francesca's documents show the SEC's line of questioning and are also posted. If it were our capital at risk and we could not get beyond the "personal reasons" story line, we'd find opportunities elsewhere.

Facts of Interest or Concern: Under Armour's CFO abruptly departed in Jan-2017, for "personal reasons." That same day UA missed earnings. The shares of UA were off sharply on the departing senior executive and earnings miss combo.

From the Under Armour 8-K filed 31-Jan-2017 –

The Company's Chief Financial Officer, Chip Molloy, has **decided to leave the company due to personal reasons**. Effective February 3, David Bergman, Senior Vice President, Corporate Finance, and a seasoned member of Under Armour's accounting and finance organization, will serve as acting CFO. Mr. Molloy will remain with the company in an advisory capacity to assist with the transition. **[Emphasis added]**

In May-2016, the Chairman/CEO of Francesca's Holdings also abruptly resigned. As was the case with the Under Armour CFO departure, Francesca's also cited "personal reasons" as the basis for the sudden departure. FRAN's stock fell 20% on the news.

From the Francesca's Holdings 8-K filed 17-May-2016 –

HOUSTON, TEXAS — May 17, 2016 — Francesca's Holdings Corporation (NASDAQ: FRAN) today announced that its Chairman, President and CEO, Michael W. Barnes **has resigned for personal reasons** effective immediately. The Company's former Lead Director, Richard W. Kunes, has been named interim Chairman, President and CEO. Mr. Kunes has served on the Company's Board since February 2013 and served as the Lead Director from July 2015 until his appointment as interim CEO. A search for a successor has commenced. **[Emphasis added]**

The SEC opened its investigation into the Francesca's executive departure the same day it was announced and informed the company of the probe a day later, on 18-May-2016. The probe, which only lasted until 08-Jun-2016, was never disclosed.

We obtained 20 pages of records from the FRAN's investigation that are highly instructive regarding how the SEC approaches a market-moving event like the abrupt departure of a senior executive. A helpful example shows up in this excerpt from an email the SEC sent to Francesca's counsel in May-2016 –

“In our experience, conduct of the sort exhibited by [executive's name redacted] has sometimes been connected to the unraveling of embezzlement, self-dealing, or undisclosed related party transactions.”

Despite the potentially serious implications of the SEC investigating the abrupt departure of a company's most senior executive, the Francesca's Holdings probe ended just three weeks later. That tells us the SEC found nothing of concern and rapidly moved on.

For historical context, Under Armour's former CFO, Mr. Molloy, had only been appointed to the role on 22-Dec-2015, making his tenure just over a year. See, [Under Armour Appoints New CFO Chip Molloy](#), 22-Dec-2015. He was previously the CFO of PetSmart since 2007. (In Dec-2014, PetSmart announced it had agreed to be sold for \$8.7 billion.)

The former CFO of Under Armour, Brad Dickerson, had been in the role since 2008. Unlike Mr. Molloy's departure, Mr. Dickerson's exit was planned and announced four months before his expected departure. See, [Under Armour Announces Brad Dickerson COO/CFO to Depart in Early 2016](#), 15-Oct-2015.

Since Mr. Molloy's departure in January, UA has experienced more earnings misses and more executive departures. Most notable is the co-founder's 6-month sabbatical reported in Oct-2017.

With the repeated earnings misses and increased turnover in the executive ranks, the shares of UA have fallen this year, leaving investors to debate the outlook for the company's apparel and sneaker lines.

We close this section with a summary of our SEC findings on Under Armour:

Five times between Nov-2012 and Jun-2016, we found no signs of SEC investigative activity at UA. That changed on 05-Jul-2017, when we got our first indication of an undisclosed SEC probe. This was confirmed on 21-Jul-2017 with UA added to our Watch List on 31-Jul-2017. The next day, on 01-Aug-2017, UA again missed earnings and did so again last quarter. As of 08-Dec-2017, the SEC probe at UA remains undisclosed.

Our Take: A company that stays silent about an SEC probe in the presence of executive departures and recurring earnings disappointments is playing Disclosure Games®. We suspect, but cannot know for sure, that the UA earnings miss and CFO departure in Jan-2017 are somehow connected to the SEC probe. We offer two possible scenarios to consider.

The first scenario is that the SEC contacted UA after the CFO departure in January and asked questions similar to what it asked FRAN when its Chairman/CEO abruptly left in May-2016. That would also suggest the SEC probe was an outcome of the CFO's departure, not a contributing factor to his leaving. If that were the case, theoretically the SEC's focus would be more on the CFO than anything the company did. Under this scenario the speculation becomes that the SEC found problems and was still investigating in the summer of 2017 as a result.

The second scenario is that the SEC was already investigating Under Armour for some kind of accounting and/or disclosure matter with related pressure contributing to the Jan-2017 earnings miss and CFO departure. We are more inclined to believe this scenario since the company has experienced more earnings shortfalls and the departure of other executives since the CFO left. Under this scenario, the behavior of the company is at-issue, not just one potential bad apple, now gone.

Again, investors with an interest in UA really need to dig into the CFO's departure. Here's the questions we'd ask:

- When did the SEC investigation start?
- Was the SEC probe underway at the time the CFO departed?
- Was undisclosed SEC pressure in any way a contributor to the CFO or co-founder's departures this year?
- What are the issues the SEC was investigating?

- Where does the SEC probe stand today?
- Is the SEC probe formal? If so, when did it become formal, to whom were the subpoenas sent, and what information did they seek?
- What was UA's last contact with the SEC's Division of Enforcement and what was the nature of that contact?
- Is the company's auditor aware of the SEC probe? If so, what has it said or done about it? If not, why not?
- Has undisclosed SEC pressure in any way been a contributor to the company's earnings shortfalls this year?

Supplemental Data:

As of 08-Dec-2017, a search of Under Armour's EDGAR filings for the past two years found no clear disclosures of SEC investigative activity.

From the Under Armour 8-K filed 31-Jan-2017:

The Company's Chief Financial Officer, Chip Molloy, has **decided to leave the company due to personal reasons**. Effective February 3, David Bergman, Senior Vice President, Corporate Finance, and a seasoned member of Under Armour's accounting and finance organization, will serve as acting CFO. Mr. Molloy will remain with the company in an advisory capacity to assist with the transition. **[Emphasis added]**

Mr. Bergman joined Under Armour in 2005 and is currently responsible for leading all major finance functions including financial planning and analysis, treasury and tax. Prior to this position, he served as Corporate Controller along with several senior management roles within the Company's accounting and finance organization. Both Mr. Molloy and Mr. Bergman will participate in Under Armour's fourth quarter call and webcast today.

From the Francesca's Holdings 8-K filed 17-May-2016:

HOUSTON, TEXAS — May 17, 2016 — Francesca's Holdings Corporation (NASDAQ: FRAN) today announced that its Chairman, President and CEO, Michael W. Barnes **has resigned for personal reasons** effective immediately. The Company's former Lead

Director, Richard W. Kunes, has been named interim Chairman, President and CEO. Mr. Kunes has served on the Company's Board since February 2013 and served as the Lead Director from July 2015 until his appointment as interim CEO. A search for a successor has commenced. **[Emphasis added]**

Previously, Mr. Kunes served as Executive Vice President & Senior Advisor to the Chief Executive Officer at The Estée Lauder Companies, Inc., ("Estée Lauder") from August 2012 to June 2013. Prior to such time, Mr. Kunes served for 12 years as Executive Vice President and Chief Financial Officer at Estée Lauder, as well as holding several other financial management positions with Estée Lauder, including Corporate Controller. He is currently a member of the Board of Directors and head of the Audit and Finance Committee of Tory Burch LLC.

Mr. Kunes stated, "We wish Mike the best in his future endeavors. During his tenure, Mike built a strong leadership team of highly accomplished and talented executives. The Board has the utmost confidence in the management team to execute the business plans for fiscal year 2016 and the initial strategies of Vision 2020, the Company's long range plan. In addition, our Board members have diverse and talented backgrounds and will provide ongoing support and guidance to the management team."

Documents Acquired Under the Freedom of Information Act:

We acquired 20 pages of records from the 2016 SEC investigation into the abrupt departure of Francesca's Holdings Chairman/CEO. For those interested in what takes place when an executive departure causes a stock price to fall sharply, these documents are worth your time. We posted them to our site. Unfortunately, we were denied access to the 5-page Case Closing Recommendation on this probe. Our appeal to try to get it was also denied.

Editor's Note: When the SEC denies access to records on closed SEC probes, 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 a probe 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.

-- Probes Reporter



Independent Investment Research Focused on Public Company Interactions with the SEC.

Notes: Our **Disclosure Insight**® reports, like those coming from other financial news and data providers, provide the investing public with commentary and analysis on public company interactions between investors and/or with the SEC and other agencies. They are journalistically based in large part on our expertise with federal filings using the Freedom of Information Act.

“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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