

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

### Disclosed SEC Investigation(s) Confirmed as On-going

**Watch List Status:** Not on Watch List of Companies with Undisclosed SEC Investigations

#### Inadequate Disclosures Make It Impossible to Assess this Material and On-going Risk

Ericsson LM Telephone Co. is not presently on our Watch List of companies with undisclosed SEC probes. It does, however, have at least one disclosed – and now protracted – SEC probe. It's an FCPA exposure moving rapidly toward settlement. We found a small item tucked in the disclosures worthy of further investigation. Disclosure excerpts cited today's report.

The timing of SEC responses to us, along with company disclosures made since then, tell us Ericsson management has known about an SEC probe since at least 2013, kept it from you for at least two years, and now wants you to believe it cannot answer questions or provide further detail.

#### Disclosure Insight®

Since 2013 we repeatedly warned on an undisclosed SEC probe that was finally, but barely, disclosed in the summer of 2016. The disclosure was clearer in Apr-2017, with the SEC and FCPA specifically named for the first time, but details were still lacking.

To the present, there's signs of progress toward resolution of the FCPA matter, but only after payment of combined monetary sanctions to the SEC and DOJ of \$1 billion US. The financial penalties are easy to analyze (almost 4% of ERIC's market cap!). What's not so easy to assess is what is meant by the language we highlight here, tucked into recent disclosures and easy to overlook –

*"However, based on the current status of the discussions, it is Ericsson's assessment that the resolution of these matters **will result in material financial and other measures**, the magnitude and impact of which cannot be reliably estimated or ascertained at this time."*

Ericsson 6-K's, 17-Apr-2019  
and 17-Jul-2019

How does one analyze that term, 'other measures'? A lot of operational problems can show up inside a company undertaking material 'other measures' on which no detail is otherwise provided. This calls for follow-up.

Which takes us to our next concern about Ericsson's disclosures, and it's similar to one we've written about in the past. In more recent filings, we found language we call downright misleading.

Specifically, we point to the following –

*"As the process is still ongoing, Ericsson is not able to, and will not make, any further comments"*

Ericsson 6-K, 26-Sep-2019

*"Further, as this is an ongoing legal matter Ericsson cannot provide any detail."*

Ericsson 6-K's, 17-Apr-2019  
and 17-Jul-2019

To be clear, there is nothing we know of that prevents a public company from making additional comments or providing additional detail on an ongoing investigation. Companies can provide investors with far more substantive detail and updates on SEC investigative activity than most do. They can – if they choose – disclose greater detail on such things as:

- First contact with the SEC.
- Records / testimony requested.
- Time period [now] covered by the investigation.

- Areas it is [now] focused on.
- Whether the investigation has expanded.
- Whether the investigation is formal.
- Involvement by other agencies.
- Company personnel asked to give testimony.
- Subpoenas (there can be many over time).
- Who got subpoenas / what they sought?
- Last contact with the SEC on the investigation(s).

When we see a company say it, “cannot provide any detail”, or something similar, we don’t buy it. This is what companies say when they simply don’t want to answer your questions. They are not being honest with you. We generally view such disclosure practices as dangerous for investors.

Finally, on a mildly positive note, we do observe the company continues to say it has been “voluntarily cooperating” with the SEC and DOJ since 2013 regarding the FCPA exposure. That suggests the absence of subpoenas and all the negative connotations that come with them. However, since we know the company has

used misleading disclosure language elsewhere, this should be verified. We have seen companies use the word ‘voluntary’ again and again in their filings. We later learn their compliance wasn’t so voluntary; that is, we get copies of the subpoenas telling us otherwise.

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask Ericsson LM Telephone Co. what contact it has 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.

Clients are invited to contact us anytime, in total confidence, to discuss how to better assess the risks we identify here.

**– John P. Gavin, CFA**

**Our full research history with select disclosure excerpts appear below.**

**From the Probes Reporter Database**

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.

Recent FOIA responses are consistent with recent company disclosures; that is, they confirm enforcement proceedings were ongoing as of 24-Sep-2019-2019. We filed our first FOIA request on this company in **Jun-2012**. Below is the notable SEC response history for this company:

20-Jun-2012	FOIA Response	No SEC investigative records found.
12-Jun-2013	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
12-Jun-2013	FOIA Response	SEC identifies large volume of records on a closed probe.
1-Oct-2014	FOIA Response	Multi-part response: SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities." SEC also identifies large volume of records on a closed probe.
8-Dec-2014	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
6-Jan-2015	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
13-Feb-2015	FOIA Response with Document(s)	Documents released on closed SEC probe(s) of this company. Access to certain other investigative records denied on same probe(s).

7-Apr-2015	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
1-Sep-2015	Appeal Response	Appeal to access certain investigative records on closed SEC probe(s) of this company denied, but other records released.
9-Dec-2015	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
21-Dec-2015	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
21-Dec-2015	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
10-Jun-2016	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
27-Jun-2016	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
30-Jan-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
21-Feb-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
18-Aug-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
11-Sep-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
30-Mar-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
2-May-2018	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
29-Nov-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
15-Feb-2019	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
5-Sep-2019	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
24-Sep-2019	Appeal Response	<b>Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.</b>

When research history is available in our database, we present it above so you can compare it to company disclosures. Other interpretative guidance and disclosures appear below.

As can be seen in the table above, at least once in the past the SEC cited the "law enforcement exemption" of the Freedom of Information Act (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 staff that releasing the withheld information could reasonably be expected to interfere with on-going enforcement proceedings."

While the SEC as a matter of course tells the public that an on-going investigation should not be construed as a finding of any wrongdoing, the public interest is understandably high in tracking these investigations and their outcome. In this case, our research shows these SEC proceedings are now disclosed by **Ericsson LM Telephone Co.**

## Documents Acquired Under the Freedom of Information Act

In a letter dated 12-Jun-2013, the SEC said the following in response to one of our requests pending at the time –

After searching our various systems of records and consulting with other SEC staff, we have identified an investigation entitled “LM Ericsson Telephone Company,” conducted from March 10, 2011 through March 25, 2013, which may contain records responsive to your request. We have been advised that the investigation consists of approximately 270,000 pages of materials (4 boxes of records, 19 CDs, correspondence, internal work files, subpoenas and numerous electronic records).

We only have one document from this probe, dated 26-Mar-2013, that informed the company its SEC investigation had ended. There is nothing in this short document that tells you what this probe was about. We also have a Case Closing Report from this same probe, dated 23-Mar-2013.

In a letter dated 01-Oct-2014, the SEC said the following in response to one of our requests pending at the time –

“...after consulting with other SEC staff, we have identified 3 boxes, 27 CDs, and 1 thumb drive that may contain records responsive to your request.”

*Footnote the SEC included in its letter to Probes Reporter:* “Please note that estimating the box equivalent of electronic data (27 CDs and 1 thumb drive) is not a precise measurement; consequently, we are unable to determine the exact number of boxes at this time. However, please be advised that we typically estimate that a single CD can store up to 700 megabytes of data, which is equivalent to 35,000 pages or approximately 11 boxes of records.”

We have no other documents or information that would help the investor to better gauge the timing, duration, or scale of the above closed matters.

*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-2012 and up to Jun-2016, found no clear disclosures of SEC investigative activity. Finally, and only after media outlets wrote about it, in Jun-2016 the company made a disclosure resembling, but not specifically saying it had an SEC/FCPA probe that started in 2013. In Apr-2017, the company was clearer about its joint SEC/DOJ exposure regarding a FCPA probe. Relevant disclosure excerpts cited below.

Even though it’s been running for a long time and the details/updates are lacking – and it appears to be nearing its end – we caution investors to remember that there is a reason **Ericsson LM Telephone Co.** started, and now keeps disclosing SEC investigative activity: **Management believes it poses a material risk.** We suggest you trust them on this. If you cannot independently understand why they reached that conclusion, or why changes are made to disclosure language related to investigation(s), you are effectively left with a company that has a known material risk that you cannot properly analyze and discount. We generally recommend investors avoid such scenarios.

**From the Ericsson LM Telephone Co. 6-K filed on 26-Sep-2019:**

Ericsson estimates costs for resolving investigations by U.S. authorities at SEK 12 b. and makes provision in third quarter

- As previously disclosed, Ericsson has been co-operating voluntarily with investigations by the United States Securities and Exchange Commission (SEC) and with the United States Department of Justice (DOJ) regarding the Company's compliance with the U.S. Foreign Corrupt Practices Act (FCPA).
- Ericsson makes a SEK 12 b. provision related to resolving the investigations, that will impact the third quarter 2019 results, to cover an estimated monetary sanction of USD 1.0 b, plus other related costs. The process to find a resolution is still ongoing.

As previously disclosed, Ericsson (NASDAQ: ERIC) has been co-operating voluntarily since 2013 with an investigation by the United States Securities and Exchange Commission (SEC) and, since 2015, with an investigation by the United States Department of Justice (DOJ) into Ericsson's compliance with the U.S. Foreign Corrupt Practices Act (FCPA) and the process is still ongoing. The investigation covers a period ending Q1 2017 and revealed breaches of the Company's Code of Business Ethics and the FCPA in six countries: China, Djibouti, Indonesia, Kuwait, Saudi Arabia and Vietnam.

The company previously communicated that the resolution of the investigations will result in material financial and other measures. While Ericsson cannot comment in detail on the ongoing process with the U.S. authorities, the Company can with current visibility now estimate the cost and thus make a provision, which will impact the third quarter 2019 results by SEK 12 b. The provision constitutes the Company's current estimate of expenditure related to resolving the U.S. investigations, of which the combined monetary sanctions from SEC and DOJ is estimated at USD 1 b., and the remainder pertains to other costs related to resolving the investigation. The provision will be booked as Other Operating Expenses in the income statement of Segment Emerging Business and Other.

In the course of the investigations, the Company identified breaches of its Code of Business Ethics and the FCPA. It is the Company's assessment that the breaches are the result of several deficiencies, including a failure to react to red flags and inadequate internal controls which enabled a limited number of employees to actively circumvent internal controls for illegitimate purposes. Disciplinary measures, including terminations where appropriate, have been taken against identified individuals determined to have breached the Code of Business Ethics. Ericsson has acted to address shortcomings and is significantly enhancing its Ethics & Compliance program, to ensure that the Company is equipped to do business the right way. **As the process is still ongoing, Ericsson is not able to, and will not make, any further comments.**

[Emphasis added by Probes Reporter]

**From the Ericsson LM Telephone Co. 6-K filed on 17-Jul-2019:**

SEC and DOJ inquiries

Ericsson is in ongoing settlement negotiations with the United States Securities and Exchange Commission (SEC) and the United States Department of Justice (DOJ) in connection with their previously reported investigation under the U.S. Foreign Corrupt Practices Act (FCPA). Ericsson is not able to estimate the length of these settlement discussions. **Further, as this is an ongoing legal matter the Company cannot provide any detail. However, based on the current status of the discussions, it is Ericsson's assessment that the resolution of these matters will result in material financial and other measures, the magnitude and impact of which cannot be reliably estimated or ascertained at this time.** Potential future cash outflows are currently not possible to reliably estimate. Accordingly, no provisions have been recorded for such potential exposure.

[Emphasis added by Probes Reporter]

**From the Ericsson LM Telephone Co. 6-K filed on 17-Apr-2019:**

SEC and DOJ inquiries

As previously disclosed, Ericsson has been voluntarily cooperating since 2013 with an investigation by the United States Securities and Exchange Commission (SEC) and, since 2015, with an investigation by the United States Department of Justice (DOJ) into Ericsson's compliance with the U.S. Foreign Corrupt Practices Act (FCPA). The Company continues to cooperate with the SEC and the DOJ, and has recently begun settlement discussions. These discussions are in a very early stage and therefore the Company is not able to estimate their length. **Further, as this is an ongoing legal matter Ericsson cannot provide any detail. However, based on the current status of the discussions, it is the Company's assessment that the resolution of these matters will result in material financial and other measures, the magnitude and impact of which cannot be reliably estimated or ascertained at this time.** Potential future cash outflows are currently not capable of being reliably estimated. Accordingly, no provisions have been recorded for such potential exposure.

[Emphasis added by Probes Reporter]

**From the Ericsson LM Telephone Co. 20-F filed on 29-Mar-2019:**

Inquiries from US authorities

As previously disclosed, Ericsson has been voluntarily cooperating since 2013 with an investigation by the United States Securities and Exchange Commission (SEC) and, since 2015, with an investigation by the United States Department of Justice (DOJ) into Ericsson's compliance with the U.S. Foreign Corrupt Practices Act (FCPA). The Company has identified facts that are relevant to the investigations. These facts have been shared with the authorities by the Company. The Company continues to cooperate with the SEC and the DOJ and is engaged in discussions with them to find a resolution. While the length of these discussions cannot be determined, based on the facts that the Company has shared with the authorities, Ericsson believes that the resolution of these matters will likely result in monetary and other measures, the magnitude of which cannot be estimated currently but may be material.

**From the Ericsson LM Telephone Co. 6-K filed on 25-Jan-2019:**

SEC and DOJ inquiries

As previously disclosed, Ericsson has been voluntarily cooperating since 2013 with an investigation by the United States Securities and Exchange Commission (SEC) and, since 2015, with an investigation by the United States Department of Justice (DOJ) into Ericsson's compliance with the U.S. Foreign Corrupt Practices Act (FCPA). The discussions with these authorities continue.

**From the Ericsson LM Telephone Co. 6-K filed on 18-Oct-2018:**

As previously disclosed, we have been voluntarily cooperating since 2013 with an investigation by the SEC and, since 2015, with an investigation by the DOJ into Ericsson's compliance with the U.S. FCPA. While we cannot comment in detail we can provide the following update on the process. We have identified facts that are relevant to the investigations and these facts have been shared with the authorities. We continue to cooperate with the SEC and the DOJ and are engaged in discussions with them to find a resolution. While the length of these discussions cannot be determined, based on the facts that we have shared with the authorities, we believe that the resolution of these matters will likely result in monetary and other measures, the magnitude of which cannot be estimated currently but may be material.

*Continued, next page*



**From the Ericsson LM Telephone Co. 20-F filed on 27-Mar-2018:**

Ericsson is currently voluntarily cooperating with inquiries from the United States Securities and Exchange Commission and the United States Department of Justice regarding its compliance with the U.S. Foreign Corrupt Practices Act. As of today, these inquiries concern a period from January 1, 2007 and onwards, and the Company will make additional disclosures regarding these inquiries to the extent required.

**From the Ericsson LM Telephone Co. 20-F filed on 26-Apr-2017:**

Ericsson is currently voluntarily cooperating with inquiries from the United States Securities and Exchange Commission and the United States Department of Justice regarding its compliance with the U.S. Foreign Corrupt Practices Act. These inquiries concern a period from January 1, 2007 and onwards, and the Company will make additional disclosures regarding these inquiries to the extent required.

**From the Ericsson LM Telephone Co. 6-K filed on 17-Jun-2016:**

Ericsson comments on recent media reports on questions concerning corruption

In March 2013, Ericsson (NASDAQ:ERIC) received a voluntary request from US Authorities to answer a number of questions relating to Ericsson's operations, something we have also confirmed to media in 2013. Ericsson cooperates with US Authorities to answer these and additional questions.

While we strive to at all times conduct our business in compliance with applicable laws, matters do arise from time to time as a result of the global nature of our business.

We will not provide any detailed comments on the request as such, but can say that it relates to Ericsson's anti-corruption program and questions related to the Foreign Corrupt Practices Act. Ericsson cooperates with US Authorities and works diligently to answer the questions.

As a listed company, we always follow the requirements to publically disclose any information about events that would have a material impact on the company or its finances. Should such materiality arise, Ericsson will disclose information in accordance with regulatory requirements.

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*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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