

## Confirmed, Undisclosed SEC Investigation

### Mallinckrodt: More SEC Problems Than Company Has Let On

*If we alert you to the 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. Other interpretative guidance and disclosures appear below.*

**Analyst Summary:** Apparently, Mallinckrodt has more SEC problems than the company has let on. For historical context, we also include the full text of a report we published on 27-May-2015, titled, "Protracted SEC Investigation of Questcor Could Haunt Mallinckrodt Investors."

**Facts of Interest or Concern:** In a letter dated 19-Aug-2016, we first received information from the SEC suggesting Mallinckrodt Plc was involved in unspecified SEC investigative activity that was undisclosed at the time. In a letter dated 30-Aug-2016, the SEC has now confirmed this company's involvement in on-going enforcement proceedings. These proceedings remain undisclosed. The SEC responses cited here are the results of our first time researching Mallinckrodt.

To be clear, the SEC response confirming investigative activity at Mallinckrodt pertained to a request we had filed solely on the Mallinckrodt entity. All we know at this point is the undisclosed SEC probe somehow involves Mallinckrodt's conduct, transactions, and/or disclosures.

While Mallinckrodt's disclosures are silent regarding an SEC probe of Mallinckrodt itself, going back in time, we observe the company has repeatedly disclosed the presence of SEC investigative activity at its Questcor unit. In fact, we have separate, prior responses from the SEC on Questcor that point to investigative activity there. Mallinckrodt acquired Questcor in April 2014.

From the Mallinckrodt 10-Q filed on 02-Aug-2016 –

In September 2012, Questcor received a subpoena from the USAO for the Eastern District of Pennsylvania for information relating to its

promotional practices related to Acthar. Questcor has also been informed by the USAO for the Eastern District of Pennsylvania that the USAO for the Southern District of New York and the SEC are participating in the investigation to review Questcor's promotional practices and related matters related to Acthar. On March 9, 2015, the Company received a "No Action" letter from the SEC regarding its review of the Company's promotional practices related to Acthar.

#### *Our full and original report of 27-May-2015 –*

#### [Protracted SEC Investigation of Questcor Could Haunt Mallinckrodt Investors](#)

#### **Facts of Interest or Concern:**

In Aug-2014, Mallinckrodt completed its acquisition of Questcor Pharmaceuticals

In a letter dated 23-Apr-2015, the SEC confirmed Questcor's involvement in on-going enforcement proceedings that was previously disclosed by Questcor.

The latest disclosures made by Mallinckrodt in May-2015 repeat in form and substance those made by Questcor a year ago when still a stand-alone company.

#### **From the former-Questcor 10-Q filed on 29-Apr-2014 –**

On September 21, 2012, we became aware of an investigation by the United States Attorney's Office, or the USAO, for the Eastern District of Pennsylvania regarding our promotional practices. Following our

September 24, 2012 announcement of this investigation, we received a subpoena from the USAO for information relating to our promotional practices. We have been informed by the USAO for the Eastern District of Pennsylvania that the USAO for the Southern District of New York and the SEC are also participating in the investigation to review our promotional practices and related matters. We continue to cooperate with the USAO and the SEC with regard to this investigation.

**From the Mallinckrodt 10-Q filed on 5-May-2015 --**

On September 24, 2012, Questcor received a subpoena from the United States Attorney's Office ("the USAO") for the Eastern District of Pennsylvania for information relating to its promotional practices. Questcor has also been informed by the USAO for the Eastern District of Pennsylvania that the USAO for the Southern District of New York and the SEC are also participating in the investigation to review Questcor's promotional practices and related matters.

**Our Take:** Mallinckrodt's been on a tear, having meaningfully outperformed the S&P 500 since this deal was done in August-2014. That makes it pretty easy to ignore some pesky SEC probe of a company it purchased last summer.

Often when companies with SEC investigations get acquired the acquirer stops talking about the exposure. This can be reasonable; that is, what may have been material to the acquired company as a stand-alone entity may not be as big an exposure in the context of the merged entity. But that's not what happened here. Even post-merger, Mallinckrodt management and their array of experts judged the Questcor SEC investigation and involvement by the US Attorney's Office (read: criminal exposure) remains a material exposure to the post-deal company. Trust them. You too should view SEC problems at Questcor as a material risk to Mallinckrodt.

Now we have to ask, if they deemed it worthy of disclosure, why then did Mallinckrodt not update investors on what's going on in this multi-year, multi-agency investigation of Questcor? To us, this is a game played too often by too many companies. It's like they needed to talk about it, so they did; but they didn't really want to talk about it, so they said very little. That too tells you this is a real exposure.

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***Notes:** 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. 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 this latest information which would not be reflected here.*

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