

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

## Confirmed, Undisclosed SEC Investigation

**Watch List Status: Maintained on Watch List of Companies with Undisclosed SEC Investigations**

**An undisclosed SEC investigation is again confirmed.** *Maintained on Watch List.* We think it's possible Nike has a problem involving accusations of bribery made against the company in spring 2019. It's not the first time.

The first Freedom of Information Act (FOIA) response indicating an SEC investigation was dated 09-May-2019. On-going enforcement proceedings now confirmed on appeal three times since, most recently on 16-Mar-2021. For this reason, Nike remains on our Watch List of companies with confirmed, undisclosed SEC investigations. We have documents from earlier SEC investigative activity, summarized later in this report.

We filed our first FOIA request on this company in **Oct-2012**. Our analysis, full research history, and relevant excerpts from company disclosures appear below. Here is our more recent FOIA response history –

16-Oct-2018	FOIA Response	No SEC investigative records found.
9-May-2019	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
19-Aug-2019	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
8-Apr-2020	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
11-Jun-2020	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
28-Jan-2021	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
16-Mar-2021	Appeal Response	<b>Existence of on-going SEC enforcement proceedings officially confirmed on appeal;</b> Access to records remains blocked.

Clients are invited to contact us anytime, in total confidence, to discuss the data, documents, and/or risks we identify here.

## Disclosure Insight®

*This section offers analysis and opinion regarding the exposure(s) we identify in this report.*

The timing of SEC responses to us suggests that **Nike management may have known about an SEC probe since at least May-2019**, a month after the Avenatti accusations.

To our view, there's enough in the history to lead us to conclude Nike is a company that willfully and repeatedly plays Disclosure Games® with investors.

Disclosure Games is a trademarked 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.

Our research shows, back to 2012, Nike does not disclose its SEC investigations. Further, they all appear related to bribery. Details appear below and in our earlier reports. We previously argued, and still believe, a bribery-related investigation may be what's behind Nike's recently confirmed SEC investigation. As we went to print, this latest investigation was not disclosed.

**Yet another investigation of bribery you say?** Perhaps. Below is a widely reported statement made in response to Michael Avenatti's bribery accusations made in Apr-2019.

*"Nike will continue its cooperation with the government's investigation into grassroots basketball and the related extortion case."*

- 07-Apr-2019 [Emphasis added]

#### Assessing the SEC Risk for Nike

Like him or not, Mr. Avenatti's accusations were loud, repeated, and came with records he posted online. To us this was sufficiently serious-sounding that the SEC was sure to open an investigation, if it was not already doing so. The company even told you it was involved in an unspecified investigation, "into grassroots basketball ..."

The SEC may not be investigating Mr. Avenatti's claims or anything related to bribery. To be sure, you have to ask

the company. The question for investors is this: Will Nike otherwise disclose it? The history suggests they will not.

In prior public statements on similar questions, which we include below, we found Nike especially adept – a master, if you will – at making references to investigative activity of some kind without really saying much. There are usually no specifics, press releases, or accompanying SEC filings.

Our earlier reports go into much more detail on what this could mean for Nike. Clients with an interest will find them at our website or are invited to contact us for copies.

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask Nike 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.

– Probes Reporter

#### Additional research history with select disclosure excerpts appear below.

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### Documents Acquired Under the Freedom of Information Act

We do have investigative records in our library from closed SEC investigations of this company. They are detailed below.

#### Regarding the Current Warning –

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.

As can be seen in the table above, at least once in the past the SEC cited the "law enforcement exemption" of the 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 Division of Enforcement staff that the investigation from which you seek records is still active and ongoing."**

### Nike's Previous, Undisclosed Bribery-Related Investigations

SEC investigative records from our document library show Nike was named or involved in two undisclosed investigations involving bribery, illegal payments, and/or money laundering. Both investigations ended in late 2016.

- One was an investigation titled, "**Certain Illegal Payments and Money Laundering in Connection with FIFA**". We only have a single-page Case Closing Report from this investigation, which shows it ended on 01-Sep-2016.
- **The other was a Foreign Corrupt Practices Act (FCPA) investigation titled, "Matter Name: Nike, Inc."** A termination letter sent to the company on 29-Jun-2016, said this investigation concluded without an enforcement action recommended against Nike, Inc. As is standard in these letters, the SEC letter also says the notice, "must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation."

We only have three pages of SEC investigative records from the above investigations. They are available to clients with an interest.

We have no other documents or information that would help the investor gauge the timing, duration, or scale of these now 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 Sep-2017, found no clear disclosure of SEC investigative activity.

The historical record suggests **Nike** does not disclose its SEC investigations. Our search of Nike filings, going back as far as May-2012, found no clear disclosure of SEC investigative activity. However, in 2015, US Federal prosecutors announced corruption cases against officials and associates connected with FIFA, the organization that puts on The World Cup football (soccer) event.

On 27-May-2015, the Huffington Post ran a story titled, "[Nike Just Became Part Of The FIFA Corruption Scandal](#)". In a statement to the Huffington Post, Nike was reported to have said,

*"Like fans everywhere we care passionately about the game and are concerned by the very serious allegations. Nike believes in ethical and fair play in both business and sport and strongly opposes any form of manipulation or bribery. **We have been cooperating, and will continue to cooperate, with the authorities.**" [Emphasis added]*

We call this a “stealth disclosure” of an investigation. Like with the statement issued in response to the Avenatti accusations, below, there was no accompanying press release or SEC filing. Nor were there specifics that identified with which authorities Nike claimed it had been cooperating. Again, we see Nike playing Disclosure Games with investors.

Later, on 17-Jul-2015, the Huffington Post then reported that the SEC was investigating matters related to the FIFA corruption scandal. See, “[FIFA Corruption Draws SEC Scrutiny](#)”, Huffington Post, 17-Jul-2015. The following is an excerpt –

*“U.S. securities regulators are examining the behavior of several companies with links to FIFA or other soccer bodies caught up in a major corruption scandal to see if there were possible violations of U.S. federal bribery laws, a person with knowledge of the matter said ... In late May, Nike said that the government had not alleged that it violated the law or knowingly took part in a kickback scheme.”*

Quoting from the same article, Nike’s response at the time was as follows –

*“In a statement on Friday [also 17-Jul-2015], a Nike spokesman said that the company ‘is committed to cooperating with any government investigation into the FIFA matter.’”*

Again, there was still no accompanying press release or SEC filing to go with this stealth disclosure of Nike’s involvement in a bribery-related investigation at the time. Again, there no specifics that identified with which government investigation Nike claimed it was committed to cooperating. One more time: Nike’s playing Disclosure Games with investors here.

### **Nike’s Response to Avenatti in Apr-2019 Revealed a Present-Day Investigation**

In a widely reported statement at the time of Mr. Avenatti’s bribery accusations, in Apr-2019, but not appearing in a press release or an SEC filing, Nike attempted to discredit Avenatti, as seen below –

*“Nike will not respond to the allegations of an individual facing federal charges of fraud and extortion and aid in his disgraceful attempts to distract from the athletes on the court at the height of the tournament. **Nike will continue its cooperation with the government’s investigation into grassroots basketball and the related extortion case.**”*

- 07-Apr-2019 [Emphasis added]

As highlighted above, and consistent with its prior pattern, Nike again made what we call a “stealth disclosure” of an investigation. It did so by acknowledging that, oh-by-the-way, Nike is involved in, “the government’s investigation into grassroots basketball”.

Public companies use the stealth disclosure ploy when they want to get some kind of bad news out there, but they do not want to give it the clarity, prominence, or detail needed for investors to objectively assess the risk it may pose. Stealth disclosures of bad news are not new to Nike. So long as analysts and reporters do not ask follow-up questions on specifics, this will remain an effective communications tool for Nike.

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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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