Undisclosed SEC Investigation Confirmed - Again

Prospect Capital Attacks Press Coverage, Critics: Our Response

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

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.

Prospect Capital Corp. – PSEC

- *On Watch of Companies with Undisclosed SEC Probes*
- *Added to Disclosure Games® List*

Analyst Summary: Today we present fresh data that Prospect Capital, yet again, has an undisclosed SEC investigation recently confirmed by the federal government as on-going. By way of background, it's worth looking at the history of what happened when we first reported on Prospect Capital's disclosure practices in December 2015.

When we last issued a warning like we are doing today, Prospect Capital mounted an offensive. This included at least one letter sent by the company's general counsel viciously attacking Probes Reporter and our founder, John Gavin. (We attached the company's letter and our response below.) It turns out that the attack on us was but one of several coordinated efforts undertaken by Prospect Capital to silence its critics. We share what we learned in this report.

Of course, companies have a right to see that they are covered in a fair, and more importantly, accurate way. But that right does not include bullying or trying to intimidate the press in an effort to aggressively control the message. Companies are out-of-bounds when making personal attacks on, or leveling threats against well-respected analysts or journalists. Finally, it is flat-out wrong when they try taking an eraser to entire sections of the internet the company or one of its executives wants kept hidden.

In that same light, Probes Reporter will not be denied its First Amendment right to report on government documents relating to matters of public concern, and to provide the investing public with its analysis. If we make an error, we will own it and fix it. But absent errors, Prospect Capital would do better to improve their disclosure practices than attack the press.

We otherwise offer no further opinion or analysis in this report but to say we stand firmly by every word we have published on Prospect Capital. We invite you to draw your own conclusions from the facts we present below.

Facts of Interest or Concern: On 08-Dec-2015, we published a warning of a confirmed and undisclosed SEC probe at Prospect Capital (See, "Will an Undisclosed SEC Probe Hurt The Dividend at Prospect Capital?) We also wrote up our findings in a report that appeared on the Seeking Alpha website on 11-Dec-2015.

On 14-Dec-2015, Mr. Joseph Ferraro, General Counsel for Prospect Capital, sent a letter to Seeking Alpha, accusing Probes Reporter and John Gavin of making "false and misleading statements" about his company, among other things. Mr. Ferraro was adamant that the SEC probe we uncovered was, "well-disclosed", and "fully and truthfully disclosed". Our research show these claims are untrue.

Prospect Capital never contacted us, nor have we communicated directly with them. The same day they received it, Seeking Alpha forwarded the letter it received from Mr. Ferraro to us, asking that we speak to the concerns raised therein. We sent our response back to Seeking Alpha the next day, on 15-Dec-2015. Again, both letters are presented below.

As we said in our letter of reply, our exhaustive and repeated searches through company filings, and review by not one but two senior analysts, found the representations by Mr. Ferraro that his company's SEC probe, supposedly from May-2014, was "well-disclosed", and "fully and truthfully disclosed", are untrue. In our response letter, in an abundance of fairness, we defied Mr. Ferraro to prove otherwise. He failed to provide any such proof that Probes Reporter was in error.

Further, we found statements made by Mr. Ferraro about any SEC probe were inconsistent with filings and a press release issued by his company, as well as data we independently acquired from the SEC.

Fresh Data from the SEC

In a letter dated 12-Jan-2016, we again received information from the SEC suggesting Prospect Capital was involved in unspecified SEC investigative activity that was undisclosed at the time. The company is on record as saying there was an SEC probe that ended in Dec-2015, and there is no other investigation of the company (*See Company's Statements/Disclosures, next section*).

Allowing for the possibility that internal systems at the SEC may not have been completely current regarding PSEC at the time of its 12-Jan-2016 response to us, we filed an administrative appeal challenging that response.

Now, in a letter dated 25-Feb-2016, the SEC confirmed Prospect Capital's involvement in *on-going* enforcement proceedings that remain undisclosed as of this date. (Note: Though dated 25-Feb-2016, the letter was sent by US Mail and not postmarked until 07-March).

As always, we remind you that the mere existence of an SEC investigation does not necessarily mean that anybody has done anything wrong. Indeed when the SEC sends out a request for information in an investigation it advises the recipient of the request that an investigation does not mean that anyone has broken the law or that the SEC has a negative opinion of any person, entity or security.

The Company's Statements/Disclosures

The following is from the Prospect Capital 8-K filed after the market closed on Friday, 11-Dec-2015, the same day our report warning of an undisclosed SEC probe appeared on the Seeking Alpha website –

> In December 2015, the Company received from the Securities and Exchange Commission (the "SEC") a notice formally closing an investigation commenced in May 2014 and advising the Company the Staff did not intend to recommend an enforcement action by the SEC against the Company.

The following statement was made by John Barry, Chairman and Chief Executive Officer on the Prospect Capital Q2-2016 Earnings Conference Call, 10-Feb-2016 –

> "In the past several days, we have seen not only people spreading lies about our company, but also people who should know better, repeating those lies without a shred of evidence, without a single identified source, without any diligent checking or any corroboration at all. **We know of no current or pending SEC investigation, inquiries or whatever you want to call it.** That is not sell-side research or journalism as each should be practiced in America, but rather fear driven rumormongering without any checking. And it is plain wrong. Plain and simple wrong. **[Emphasis added]**
>
> We are amazed how many of the things we have seen written ever passed muster for editorial and quantity control with the management of a Wall Street research department, or a quality publication. This appears to be nothing short of a smear campaign to use lies as a campaign to try to hurt our company, and our shareholders. We are not interested in seeing that campaign succeed. Now we would like to get back to the important business of our Company."

Prospect Capital Campaign to Silence Press, Critics

1. Statement by John Barry, Chairman and Chief Executive Officer on the Prospect Capital Q2-2016 Earnings Conference Call of 10-Feb-2016, referring to recent reporting on his company as, "… a smear campaign to use lies as a campaign to try to hurt our company, and our shareholders." (Full quote in previous section, just above).

2. Legal Threats Demanding That Seeking Alpha Shut Down Coverage of Prospect Capital on its Site. Prospect Capital sent multiple letters to Seeking Alpha demanding retraction of articles posted to its site by different authors, including Probes Reporter. In the letter posted below, the one from 14-Dec-2015 that specifically attacked Probes Reporter, the company demanded Seeking Alpha, "… take immediate corrective action to shut down the PSEC section of the Seeking Alpha website in order to stop the dissemination of false information about PSEC on the Seeking Alpha website".

   Seeking Alpha kept our report intact, only adding this statement on the page after receiving the complaint from Prospect Capital: *"(Editors' Note: Subsequent to this article, Prospect Capital released a filing stating that an SEC investigation was closed in December and that no investigation is open)." [sic]*

   Apparently, this was not the first time that Prospect Capital threatened Seeking Alpha. In that same letter sent to Seeking Alpha about our report on 14-Dec-2015, you will see a footnote on page one that references another letter it sent only days earlier, on 10-Dec-2015, "… requesting immediate removal of the article entitled '*Prospect's Board Adds Vote Interference To Its Resume'*, posted December 8, 2015 by another Seeking Alpha author Lawrence Zack Galler." [sic]

3. Motley Fool Removed Articles on Prospect Capital. According to the author, Jordan Wathen, Prospect Capital was behind having three of his articles pulled from the Motley Fool website originally published between Aug-Sep, 2015. You can read the original title of each piece within the links which we highlight below. However, clicking on them only leads to "404" error messages.

   http://www.fool.com/investing/general/2015/08/29/**prospect-capital-earnings-look-beyond-the-headline**.aspx?source=eogyholnk0000001

   http://www.fool.com/investing/general/2015/09/09/**why-did-an-analyst-laugh-out-loud-on-prospect**-capi.aspx?source=eogyholnk0000001

   http://www.fool.com/investing/general/2015/09/18/**prospect-capital-wants-too-much-from-shareholders**.aspx

   Aug-2015 was the last time an article written by Mr. Wathen about Prospect Capital appeared on the Motley Fool website. He otherwise remains prolific in his criticism of the company through his Twitter account @jwthn.

4. Yahoo Message Board on Prospect Capital Deleted. We came across internet "chatter" accusing Prospect Capital of having been the force behind having the Prospect Capital message board/chat room at Yahoo Finance silenced. We could not independently confirm this speculation. However, what we do know is there is no message board at Yahoo Finance for Prospect Capital at this time.

   Here is what you see when you click on "Message Boards" for Prospect Capital at Yahoo Finance today.

The Letters From December 2015 Appear Below.

Please note that at the time of publishing this report we added highlights to text and annotations within the documents appearing on the following pages. They did not appear in original letters.

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Our Terms of Service, relevant disclosures, and other legal notices can be found here.

December 14, 2015

Via Email: george@seekingalpha.com
Seeking Alpha
52 Vanderbilt Avenue
New York, NY 10017
Attention: George B. Moriarty, Managing Editor

Re: "Will An Undisclosed SEC Probe Hurt The Dividend At Prospect Capital?" posted December 11, 2015 by John Gavin; "Eliasek barely survives board vote" posted December 7, 2015 by Stephen Alpher

Dear Mr. Moriarty:

I am General Counsel of Prospect Capital Corporation ("PSEC"). PSEC demands that *Seeking Alpha* take immediate corrective action to shut down the PSEC section of the *Seeking Alpha* website in order to stop the dissemination of false information about PSEC on the *Seeking Alpha* website. Last Friday, December 11, 2015, at 5:58 a.m. EST, *Seeking Alpha* author John P. Gavin posted a defamatory article entitled "Will An Undisclosed SEC Probe Hurt The Dividend At Prospect Capital?" – which has caused and continues to cause severe harm to PSEC and PSEC's shareholders.[1]

A. False and Misleading Statements in Mr. Gavin's *Seeking Alpha* Article

Mr. Gavin's article falsely states, among other things, that there is an "ongoing enforcement proceeding" against PSEC. This assertion is absolutely false. The investigation referenced in the article related to an issue PSEC successfully resolved with the SEC going back to May **2014**. **There is no ongoing investigation by the SEC, and any statement to the contrary is false and misleading**. Had Mr. Gavin bothered to contact PSEC prior to posting the article, PSEC could have corrected him. *Seeking Alpha* has failed to adhere to the most basic of principle of journalistic integrity – requiring its authors to ask the subject of their story for an opportunity to comment before publishing defamatory content. Mr. Gavin and *Seeking Alpha*

[1] http://seekingalpha.com/article/3749576-will-an-undisclosed-sec-probe-hurt-the-dividend-at-prospect-capital?auth_param=pkelp:1b6lb47:723fccc745abbfd89384cfcb6e2631a3&uprof=28&dr=1

The damages PSEC is suffering at the hands of *Seeking Alpha* are not author-specific. On December 10, 2015, my colleague Adam Burton sent *Seeking Alpha* a letter requesting immediate removal of the article entitled "Prospect's Board Adds Vote Interference To Its Resume", posted December 8, 2015 by another *Seeking Alpha* author Lawrence Zack Galler. On December 11, 2015, you summarily refused our request.

had plenty of time to seek comment from PSEC prior to publication, as the article references a purported FOIA response from the SEC dated November 10, 2015 – over a month ago.

In response to Mr. Gavin's market manipulation, aided and abetted by *Seeking Alpha* as his equally reckless megaphone, PSEC released an 8-K on December 11, 2015.[2] The 8-K corrected Mr. Gavin's inexcusable conflation of the prior, well-disclosed May 2014 SEC investigation with a completely non-existent "new" investigation. (*Id.* ("In December 2015, the Company received from the Securities and Exchange Commission (the 'SEC') a notice formally closing an investigation commenced in May 2014 and advising the Company the Staff did not intend to recommend an enforcement action by the SEC against the Company.").)

Even after he reviewed PSEC's 8-K, Mr. Gavin has doubled down on his reckless error, tweeting, "Ok, Prospect Capital. You finally admit there was an undisclosed SEC probe of 19 months. But you still don't say what it was about." In his zeal to continue to attack PSEC without conducting the most rudimentary fact-checking, Mr. Gavin refuses to acknowledge that the "SEC probe of 19 months [ago]" was fully and truthfully disclosed. (*See, e.g.*, PSEC 10-Q filed May 6, **2014** ("In connection with the SEC staff's review of our filing on Form N-14 for the acquisition of Nicholas Financial, Inc., the staff of the SEC has asserted that some of our wholly owned companies are investment companies for accounting purposes and are required to be consolidated by us. Based on our assessment of generally accepted accounting principles ('GAAP'), we disagree with the staff's assertion and intend to appeal to the SEC's Chief Accountant and, if necessary, the Commission itself. We do not yet know the timing of such appeal process."); PSEC 10-K/A dated August 26, **2014** ("On June 10, 2014, based on those discussions with the Office of the Chief Accountant, we concluded the following: Our historical non-consolidation of wholly-owned and substantially wholly-owned holding companies did not require restatement of our prior period financial statements. Upon our adoption of ASU 2013-08 for the fiscal year ended June 30, 2015, we will begin consolidating on a prospective basis certain of our wholly-owned and substantially wholly-owned holding companies formed by us in order to facilitate our investment strategy.").)

In sum, there is no "undisclosed SEC probe" into PSEC, and Mr. Gavin's misrepresentation to the contrary must be formally retracted with an apology to PSEC, in order to mitigate the serious injury his gross negligence has inflicted on PSEC and its shareholders. A silent deletion of the article will be inadequate to remediate the harm, as investors must see express acknowledgment by *Seeking Alpha* of the incorrectness of Mr. Gavin's misinformation.

B. Immediate and Irreparable Harm on PSEC and PSEC's Shareholders Caused by Mr. Gavin's *Seeking Alpha* Article

Instead of seeking comment from PSEC, Mr. Gavin (with *Seeking Alpha*'s help) recklessly published his article three-and-a-half hours before Friday's market open, causing

[2] http://biz.yahoo.com/e/151211/psec8-k.html

PSEC's stock price to drop from $7.02 at Thursday's close to $6.79 at Friday's opening bell to only $6.64 at Friday's close – **a 5.41% and $135 million (based on PSEC's market capitalization) one-day drop attributable entirely to false stories posted on *Seeking Alpha***. Mr. Gavin's article evidently misled many investors into believing that the SEC probe he referenced involved a new, undisclosed investigation instead of the fully disclosed and resolved investigation from May 2014. The author's misleading and alarmist language – "With such a large dividend on the line, investors cannot afford to sit idly by wondering if, or when, Prospect Capital management decides to tell you about the company's SEC investigation. They may never disclose it. Or, perhaps, they may seek to delay disclosure as long as possible." – added to the harm caused by his false statements.

Mr. Gavin's defamatory article also caused two plaintiffs' law firms to issue press releases announcing the commencement of investigations into PSEC based entirely on the misinformation he spread. At 2:30 p.m. on Friday, Goldberg Law PC announced that its "investigation will focus on a December 11, 2015, *Seeking Alpha* report asserting that the U.S. Securities and Exchange Commission disclosed that Prospect Capital is the subject of a previously undisclosed SEC probe."[3] Misled by Mr. Gavin's misrepresentations just as the rest of the market was, Goldberg Law PC also asserted, "When the truth was revealed, shares dropped causing investors harm." Of course, the "truth" in Mr. Gavin's article was not truthful; consequently, it was Mr. Gavin's falsehoods that stirred needless panic about a non-existent SEC probe and caused PSEC investors harm – harm that *Seeking Alpha* is liable for remediating. Earlier on Friday, at 12:20 p.m., the Pomerantz Law Firm issued a similar announcement against PSEC caused solely by Mr. Gavin's misleading article.[4]

C. Mr. Gavin's *Seeking Alpha* Article Is Defamatory Under Applicable Law and Violates *Seeking Alpha*'s Own Terms of Use

Under well-settled law of defamation, falsely accusing a plaintiff of unlawful conduct is defamatory *per se*. *See Knutt v. Metro Int'l, S.A.*, 91 A.D.3d 915, 916, 938 N.Y.S.2d 134, 137 (2d Dep't 2012) ("Imputing a serious crime to the plaintiff constitutes defamation per se.") (citations omitted). Mr. Gavin (and by extension *Seeking Alpha*) has no defense to defamation, as Mr. Gavin by his own admission uses the heading "The Facts" to describe his intentional (or at least reckless and grossly negligent) misstatements and misrepresentations. Any attempt by Mr. Gavin here to couch his statements as "opinions" also fails. *See, e.g., Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688, 709-10 (2007); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 17 (1990) ("Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the

[3] http://finance.yahoo.com/news/important-investor-alert-goldberg-law-193000188.html

[4] http://finance.yahoo.com/news/shareholder-alert-pomerantz-law-firm-172000995.html

statement may still imply a false assertion of fact. Simply couching such statements in terms of opinion does not dispel these implications.").

Mr. Gavin's article also violates *Seeking Alpha*'s own terms of use. *Seeking Alpha* prohibits any author from "[p]ost[ing] or transmit[ting] any Content that is unlawful, harmful or injurious to others, contains software viruses, or other harmful computer code, files or programs, threatening, abusive, offensive, harassing, derisive, defamatory, vulgar, obscene, libelous, hatefully, racially, ethnically or otherwise tortious or objectionable."[5] It is incomprehensible that *Seeking Alpha* would permit Mr. Gavin to post his facially defamatory material on its website without a shred of verification or journalistic integrity – especially on the heels of Mr. Burton's December 10, 2015 letter cautioning you about the harm *Seeking Alpha* had already caused PSEC.

D. Others' Comments Further Exposing the Misrepresentations in Mr. Gavin's *Seeking Alpha* Article

Some readers of Mr. Gavin's article – who apparently could do the research into PSEC that Mr. Gavin willfully refused to do before deliberately rushing ahead to disseminate his blatant falsehoods – pointed out Mr. Gavin's many misstatements in the *Seeking Alpha* Comments section:

> "Maybe I missed it but where exactly in this 'investigational' article is the very important paragraph that states the author contacted PSEC and asked them straight-up about the alleged SEC investigation? And, if the author did ask but mistakenly left that very important part out of his 'investigational' article, what was their response?"
>
> "The SEC has been working with Prospect for years and the company has disclosed and discussed this openly with shareholders. Do you know anything at all about Prospect? The Company as recently as the last 10 Q filing discussed communications and information requests it receives from the SEC. What hedge fund is paying you for your service here? This article needed to come out 2 years ago, you are tardy Mr. Gavin."
>
> "This was the SEC probe initiated in 2014. This looks like another Seeking Alpha article written to generate clicks for the writer's revenue without any substance and I, for one, am thinking about removing my feed from Seeking Alpha. There is far too much unfounded erroneous stuff written on this website, and that is too bad, because I do believe some of the analysis is done with objectivity, hard work, and thought, which was the intent of the founders. This is not one of those pieces."

[5] http://seekingalpha.com/page/terms-of-use

"Your article seems premised on stirring a shareholder reaction to the emotive term 'SEC PROBE' – You've got the word 'PROBE' 24 times in your article. The last SEC 'PROBE' on PSEC was an attempt to change the way controlled subs are accounted for and it turned out to be mute."

E. Mr. Alpher's *Seeking Alpha* Article Should Also Be Removed

Seeking Alpha also published an article on December 7, 2015 by another *Seeking Alpha* author Stephen Alpher entitled "Eliasek barely survives board vote" containing more false and damaging information.[6] Contrary to the claim in the article, Mr. Eliasek actually received 84% of the votes cast. The article also misidentified Grier Eliasek as PSEC's "chairman" – he is the President and Chief Operating Officer. As one commenter to the article stated: "Who is beating the drum to provide inaccurate and misleading articles on PSEC? Last I checked, Mr. Eliasek is not the 'Chairman' as noted above. In addition 'just a hair over 50%' sounds like it was very close, when in fact it was not. Come on writers, fess up."

* * *

In light of the pattern of recklessly false and misleading articles that *Seeking Alpha* has posted in recent weeks, PSEC demands that *Seeking Alpha* do the following: (1) immediately take down the referenced articles by Mr. Gavin, Mr. Galler and Mr. Alpher; (2) post a formal retraction of Mr. Gavin's article, with an apology to PSEC and PSEC's shareholders, in light of the enormous harm that article has inflicted; and (3) shut down the PSEC section of *Seeking Alpha* and stop posting any further articles about PSEC. The harm these *Seeking Alpha* authors have caused PSEC and PSEC's shareholders, through the reckless aiding and abetting of *Seeking Alpha*, must cease and desist immediately. Any delay by you in remediating this matter will only serve to increase the ongoing harm to PSEC and its shareholders. PSEC reserves all rights.

Very truly yours,

Joseph Ferraro
General Counsel
Prospect Capital Corporation

cc: Eli Hoffmann, CEO, Editor-in-Chief (eli@seekingalpha.com)
legal-issues@seekingalpha.com
disputes@seekingalpha.com
Adam Burton, Esq.
Jonathan Li, Esq.

[6] http://seekingalpha.com/news/2969766-eliasek-barely-survives-board-vote

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Via Email (george@seekingalpha.com and disputes@seekingalpha.com)

December 15, 2015

Mr. George Moriarty, Editor
Seeking Alpha
52 Vanderbilt Avenue
New York, NY 10017

Re: Letter from Prospect Capital to Seeking Alpha regarding John P. Gavin, CFA /Probes Reporter® report written on Prospect Capital and posted to Seeking Alpha website on December 11, 2015

Dear Mr. Moriarty:

Thank you for asking for our reply to the letter you received from Mr. Joseph Ferraro, General Counsel for Prospect Capital yesterday, December 14, 2015. In his letter, Mr. Ferraro makes false statements about our report and analysis regarding Prospect Capital, published to the Seeking Alpha website last Friday, December 11, 2015. Sadly, he veers into wild conspiracy theories about myself, my firm and Seeking Alpha, which are so ludicrous they need not be addressed.

Our policy is to quickly, and without fear or favor, investigate claims of errors in our reports and make corrections if needed. In this case there is nothing to correct. If anything, we would assert Prospect Capital prevaricated and continues to play "hide the ball" with the market regarding its disclosure practices.

Let me respond to each of the allegations of error made by Mr. Ferraro in his letter to you:

1. *"Mr. Gavin's article falsely states, among other things, that there is an "ongoing enforcement proceeding" against PSEC. This assertion is absolutely false. The investigation referenced in the article related to an issue PSEC successfully resolved with the SEC going back to May 2014. There is no ongoing investigation by the SEC, and any statement to the contrary is false and misleading."[sic]*

The statements we made are true, privileged and fully protected by the First Amendment and the New York State Constitution. While there may apparently be

no ongoing investigation of his company by the SEC *at present*, it remains undeniable that there was one in the very recent past and that his company did not disclose it.

Further, the SEC confirmed in writing in no uncertain terms that as of November 10, 2015, Prospect Capital's "involvement in ongoing enforcement proceedings." And it is an unshakable truth that Prospect Capital did not disclose these proceedings prior to publication on the morning of December 11, 2015. Mr. Ferraro can huff-and-puff all he wants, but this is in black-and-white on government letterhead. It is absolutely privileged to report this as we did under the First Amendment and the United States Constitution. Period.

2. *"Had Mr. Gavin bothered to contact PSEC prior to posting the article, PSEC could have corrected him. Seeking Alpha has failed to adhere to the most basic of principle of journalistic integrity – requiring its authors to ask the subject of their story for an opportunity to comment before publishing defamatory content. Mr. Gavin and Seeking Alpha had plenty of time to seek comment from PSEC prior to publication, as the article references a purported FOIA response from the SEC dated November 10, 2015 – over a month ago."*

We have met our legal and ethical obligation to confirm information. We remain wholly transparent regarding our long-standing practice of not contacting the companies on which we publish. Further -- and you'd think the General Counsel of a NASDAQ-listed investment company would know this -- it would have been a violation of Reg FD had the company confirmed an SEC investigation *without first telling the entire market via appropriate disclosure mechanisms.* Given the lag time of SEC responses to FOIA appeals, the SEC letter of November 10, 2015 double-confirming Prospect Capital's undisclosed SEC investigation remains privileged and the hallmark of proper documentation and journalistic due diligence. In addition, when we file one of our administrative appeals with the SEC's Office of the General Counsel, an SEC attorney from that office undertakes to manually review the file on the company on which we are requesting records. That same attorney specifically stated, *"We have confirmed with staff that releasing the withheld information could reasonably be expected to interfere with on-going enforcement proceedings."*

In addition, Mr. Ferraro leaves out of his tirade that our report says in no uncertain terms that "An SEC investigation is a fact-finding inquiry. It does not necessarily mean that a public company, or anybody for that matter, has done anything wrong. Indeed, when the SEC sends out a request for information in an investigation, it advises the recipient of the request that an investigation does not mean that anyone has broken the law or that the SEC has a negative opinion of any person, entity or security."

3. *"In response to Mr. Gavin's market manipulation, aided and abetted by Seeking Alpha as his equally reckless megaphone, PSEC released an 8-K on December 11, 2015.2 The 8-K corrected Mr. Gavin's inexcusable conflation of the prior, well-disclosed May 2014 SEC investigation with a completely non-existent "new" investigation. (Id.) ("In December 2015, the Company received from the Securities and Exchange Commission (the 'SEC') a notice formally closing an investigation commenced in May 2014 and advising the Company the Staff did not intend to recommend an enforcement action by the SEC against the Company.").)"*

> Fabricating allegations of "market manipulation" against financial journalists & analysts is a common tactic deployed by companies seeking to distract the market from a company's problems. While we applaud Prospect Capital for finally coming somewhat clean regarding its heretofore undisclosed SEC probe, we cannot help but note that the company waited until after the market closed, late on a Friday, to make its related disclosure. We also note that was the first time the company admitted that this SEC probe either existed or had ended.
>
> We check all company filings up until press time. While the company did say its investigation ended in December, it did not say *when* and we obviously had no way of knowing that, as it was not disclosed to the public by the company at press time. The company only admitted the probes hours later on the same day.

4. *"Even after he reviewed PSEC's 8-K, Mr. Gavin has doubled down on his reckless error, tweeting, 'Ok, Prospect Capital. You finally admit there was an undisclosed SEC probe of 19 months. But you still don't say what it was about.'*

> This tweet is entirely accurate, and is protected by the First Amendment and the New York Constitution. We stand fully by the content of this and all tweets we made on Prospect Capital. The company has still not explained to the investing public what was behind a long-running (19 months) and undisclosed SEC probe. Investors still don't know exactly when the investigation began, what issues it involved, and why it took so long to both disclose and resolve it.

5. *In his zeal to continue to attack PSEC without conducting the most rudimentary fact-checking, Mr. Gavin refuses to acknowledge that the "SEC probe of 19 months [ago]" was fully and truthfully disclosed. (See, e.g., PSEC 10-Q filed May 6, 2014 ("In connection with the SEC staff's review of our filing on Form N-14 for the acquisition of Nicholas Financial, Inc., the staff of the SEC has asserted that some of our wholly owned companies are investment companies for accounting purposes and are required to be consolidated by us. Based on our assessment of generally accepted accounting principles ('GAAP'), we disagree with the staff's assertion and intend to appeal to the SEC's Chief Accountant and, if necessary, the Commission itself. We do not yet know the timing of such appeal process."); PSEC 10-K/A dated August 26, 2014 ("On June 10, 2014, based on those discussions with the Office of the Chief Accountant, we concluded the following: Our historical non-consolidation of wholly-owned and substantially wholly-owned holding companies did not require restatement of our prior period financial statements.*

Upon our adoption of ASU 2013-08 for the fiscal year ended June 30, 2015, we will begin consolidating on a prospective basis certain of our wholly-owned and substantially wholly-owned holding companies formed by us in order to facilitate our investment strategy.").)

> There was ample fact-checking and the ongoing probe was indeed confirmed by no less an authority than the United States Securities and Exchange Commission. Two highly experienced and qualified analysts, myself as one of them, separately reviewed the company's filings prior to our publishing anything on Prospect Capital. I personally reviewed them again yesterday, in painstaking detail, since receiving the complaint you forwarded.
>
> There is nothing in the company's disclosures of the past two years, or data we independently acquired from the SEC, that shows any disclosure of the probe. It is worth noting that the words, "probe" or "investigation" or "enforcement" or "inquiry" never appear in the relevant parts of the company filings at issue. At best, the company is straining credibility by trying to have us now believe it made full and truthful disclosures of an SEC probe. It did not.

In defense of my work and in the public interest, let us now examine Mr. Ferraro's spurious assertion that his company's SEC probe was "fully and truthfully disclosed." At best, this strains credibility. At worst, it is a flat-out lie. Either way, SEC data and the company's own disclosures do not support such a statement.

I have been at this a long time, and having reviewed untold thousands of pages of SEC filings and related documents over the years, I've learned of the many ways that public companies can, and do, properly disclose their SEC investigations. We have learned to identify by contrast, those companies who in our opinion use what we would call "stealth" disclosure tactics: the use of language typically designed to barely meet the standard for having technically disclosed the existence of the underlying SEC matter without necessarily giving it prominence. Prospect's alleged "disclosures" do not even cross that threshold.

Prospect Capital makes a lot of filings and registrations with the SEC. The company routinely refers to the fact that different filings and registrations are in one state or another of review or discussion with the SEC. To the casual reader, the nebulous terms, "review" or "discussions" sound like routine matters. To an expert, like us, they sound like an interaction / discussion with the SEC's Division of Corporation Finance. It usually is. This is the entity within the SEC responsible for conducting reviews of a company's filings. This division routinely sends written comments to, and has discussions with, public companies concerning their filings, accounting, and disclosure practices. As many in finance and the legal community know, it is the SEC's Division of Enforcement that conducts the investigations within the SEC, not the Division of Corporation Finance. While the company does refer to Division of Investment Management, and the Office of the Chief Accountant, it never once referenced the Division of Enforcement in the past two years.

In fact, after a careful and repeated review, and even giving them every benefit of the doubt, *at no time in the past two years could we find that Prospect Capital had disclosed anything in their EDGAR filings that resembles an SEC investigation, inquiry, probe, or communications with the SEC's Division of Enforcement.*

As a supplement to this letter, we include the full excerpt from the Prospect Capital 10-Q filed May 6, 2014 cited by Mr. Ferraro in his letter to you.

We defy Mr. Ferraro to point out just one use of the terms "inquiry", investigation", "probe", "document request", "informal", "formal", "subpoena", and/or "enforcement". He cannot, *because those words do not appear in the filing excerpt he cited.* For him to now claim that these probes were "fully and truthfully disclosed" is too cute by half, and we believe both securities regulators and any court would agree.

We further note the company issued a press release dated June 10, 2014, in which the company claims the matter, cited by Mr. Ferraro in his letter to you, was actually resolved – and to the company's satisfaction. The following is an excerpt from that press release, with the full press release as a supplement below –

> *Prospect Capital Corporation (NASDAQ: PSEC) ("Prospect", or "we") today announced that based on* ***our discussions with the staffs*** *of the* ***Division of Investment Management*** *("IM") and the* ***Office of the Chief Accountant*** *("OCA") of the Securities and Exchange Commission ("SEC"), Prospect will not be required to restate its prior period financial statements to consolidate certain wholly-owned or substantially wholly-owned holding company subsidiaries" [Emphasis added]*

Within this same press release, the company's own CFO went on to thank the SEC for helping bring this matter to, "an acceptable conclusion", as we see here,

> *"We would like to commend the SEC staff for the prompt and professional manner in which they handled the situation," said Brian Oswald, Chief Financial Officer of Prospect. "****We are pleased that Prospect was able consult with OCA [Office of the Chief Accountant] and IM [Investment Management] for an acceptable conclusion.****" [Emphasis added]*

Just like the spurious and nebulous 10-Q "disclosures," there is nothing in the press release at all that would suggest this was an investigation just ended or that there was one still on-going at the time.

The SEC record and Prospect Capital's statements both point to the SEC matter referenced in Mr. Ferraro's letter as having ended in June 2014. Perhaps Mr. Ferraro missed this press release as an accompanying 8-K filing was, curiously, not made. We also observe this press release also remains suspiciously silent regarding use of the words

or terms "inquiry", investigation", "probe", "document request", "informal", "formal", "subpoena", and/or "enforcement".

The last detailed disclosure of this matter was then made in the 10-K first filed August 25, 2014 and then amended November 3, 2014 (Full excerpt included as part of the supplement, below). In both cases, the company disclosed the outcome and expected impact on the company. The very last reference in any way to this matter appears in the 10-Q filed February 4, 2015, at which time the company simply talks about a related expense item from the prior year, as follows –

> *The increase of $2,928 during the six months ended December 31, 2014 is primarily due to an increase in our legal fees related to the discussions with the SEC regarding consolidation.*

In all my years of financial analysis and reporting, I have never seen a company soft-pedal an SEC probe by calling it a mere "discussion".

Below is a timeline of our due diligence proving what took place here:

Date of Activity	Activity Type	Activity Details
6-May-2014	Company filing	10-Q filing in which PSEC says, " the staff of the SEC has asserted that certain unconsolidated holding company subsidiaries through which we hold our investment in operating subsidiaries should be consolidated and consequently is delaying the effectiveness of our registration statement on Form N-14 related to this transaction."
10-Jun-2014	Company press release	PSEC press release announces resolution of outstanding issues with SEC
2-Jul-2014	**FOIA response**	No Investigative records Found
25-Aug-2014	Company filing	10-K is last detailed disclosure on SEC consolidation "review" & "discussions"
3-Nov-2014	Company filing	10-K/A is repeat of last detailed disclosure on SEC consolidation "review" & "discussions"
25-Nov-2014	**FOIA response**	No Investigative records Found
4-Feb-2015	Company filing	10-Q makes final reference to, "increase in legal fees related to the discussions with the SEC regarding consolidation."
8-Oct-2015	**FOIA response**	Request in-process
23-Oct-2015	**FOIA response**	Access to records blocked, possible investigation (B7A)
4-Nov-2015	**FOIA response**	Appeal in-process
10-Nov-2015	**FOIA response**	On-going enforcment proceedings confirmed.

Our in-depth review and analysis of Prospect Capital's SEC filings over the past two years shows no clear, or even "stealth" disclosure of an SEC investigation by the company. Company disclosures state, clearly, that the SEC matter so fervently waved about by Mr. Ferraro was actually resolved to the company's satisfaction in June, 2014.

Our data independently acquired from the SEC also supports that there was, in fact, no SEC investigation of Prospect Capital at either of July 2, 2014 or later that same year, November 25, 2014. This would be consistent with any matter having ended prior.

Rather than waste his time attacking a reputable and independent publisher of investment research, perhaps Prospect Capital would be better advised to use its talents to make its disclosures more timely and transparent.

There is nothing further in Mr. Ferraro's letter worth responding to. If they don't like the market impact to our report, they have only their shoddy disclosure practices to blame. We therefore see no basis to change anything we have published, though we are willing to reconsider if you have any specific new information to provide.

Naturally, and in order to be as fair as possible and allow the investing public to be brought up to date, we do believe there may be value in allowing Prospect Capital to publish a Letter to the Editor, perhaps even the letter they sent you, or to publish an update appended to the report that repeats the after-publication and after-market close "disclosure" at issue. At that time we may then choose to publish our own response. For now, however, we reiterate that we stand fully by the story as published.

Sincerely,

John P. Gavin, CFA
President and CEO
Probes Reporter, LLC

cc: Charles J. Glasser, Jr. Esq.

Supplement – Excerpts appear below from,

- **The Prospect Capital 10-Q filed May 6, 2014;**
- **Full text from the press release of June 10, 2014; and,**
- **The 10-K/A filed November 3, 2014.**

Excerpt from the Prospect Capital 10-Q filed May 6, 2014 –

This is where Prospect Capital claims to have first "fully and truthfully" disclosed its SEC investigation.

On December 17, 2013, we entered into a definitive agreement to acquire 100% of the common stock of Nicholas Financial, Inc. ("Nicholas") for $16.00 per share. Nicholas is a specialty finance company headquartered in Clearwater, Florida. Nicholas is engaged primarily as an indirect lender in the consumer automobile lending business, where Nicholas purchases loans originated by more than 1,600 car dealerships.

If the arrangement is completed, each outstanding Common Share of Nicholas Financial-Canada will be converted into the right to receive the number of shares of common stock of Prospect determined by dividing $16.00 by the volume-weighted average price of Prospect common stock for the 20 trading days prior to and ending on the trading day immediately preceding the effective time of the arrangement. Each option to acquire shares of Nicholas Financial-Canada common stock outstanding immediately prior to the effective time of the arrangement will be cancelled or transferred by the holder thereof in exchange for a cash amount equal to the amount by which (i) the product obtained by multiplying (x) the number of Common Shares of Nicholas Financial-Canada underlying such option by (y) $16.00 exceeds (ii) the aggregate exercise price payable under such option. As of May 5, 2014, the last reported sales price for Prospect common stock was $10.81.

Including the $199,466 equity valuation for Nicholas and after taking into consideration its outstanding net debt, which is currently $122,911, the overall value placed on Nicholas in the transaction is approximately $322,377 before estimated transaction fees and expenses. Upon closing the transaction, Prospect currently intends to refinance the business using proceeds from a newly committed $250,000 revolving credit facility from bank lenders and an operating company term loan that Prospect will provide. The aggregate net proceeds from this recapitalization will be used to repay the existing debt of Nicholas and return a portion of capital issued by Prospect to complete the transaction on the closing date. After receipt of the recapitalization cash distribution, Prospect will have a net investment in the transaction of approximately $135,906.

As disclosed elsewhere in this document, the staff of the SEC has asserted that certain unconsolidated holding company subsidiaries through which we hold our investment in operating subsidiaries should be consolidated and consequently is delaying the effectiveness of our registration statement on Form N-14 related to this transaction. The purchase agreement provides for this transaction to close by June 12, 2014, subject to certain terms, or on such other date as the parties to the arrangement may agree in writing. We are currently in discussions to extend the closing deadline to allow us time to appeal the staff's position. Based on the foregoing, we do not currently anticipate that the transaction will close by June 12, 2014.

Basis of Consolidation

Under the 1940 Act, the regulations pursuant to Article 6 of Regulation S-X and ASC 946, Financial Services—Investment Companies ("ASC 946"), we are precluded from consolidating any entity other than another investment company or an operating company which provides substantially all of its services and benefits to us. Our consolidated financial statements include our accounts and the accounts of PCF and PSBL, our wholly-owned, closely-managed subsidiaries that are also investment companies. All intercompany balances and transactions have been eliminated in consolidation.

In connection with the SEC staff's review of our filing on Form N-14 for the acquisition of Nicholas Financial, Inc., the staff of the SEC has asserted that some of our wholly owned companies are investment companies for accounting purposes and are required to be consolidated by us. Based on our assessment of generally accepted accounting principles ("GAAP"), we disagree with the staff's assertion and intend to appeal to the SEC's Chief Accountant and, if necessary, the Commission itself. We do not yet know the timing of such appeal process.

The staff asserts that these wholly owned holding companies should be accounted for as investment companies. We disagree with the staff's assertion. These companies are the holding companies through which we own and operate the underlying subsidiary operating companies engaged in a variety of industries, including manufacturing, services, real estate and consumer finance businesses. These holding companies are used for a variety of business purposes relevant to each underlying operating company, including the borrowing of structurally subordinated debt against the holding companies, which is a common private equity industry practice employed to make possible attractive financing terms for operating company debt and to achieve other important benefits, including enhanced supplier, customer, and insurance terms. We believe the consolidation position of the staff is not supported by any written guidance within existing GAAP and that it is not appropriate to account for such holding companies of the operating companies as investment companies, as these holding companies do not meet the definition of an investment company under current GAAP. In addition, current GAAP permits but does not require investment companies to consolidate other investment companies (ASC 946-810-45-2). Based on existing accounting standards, we believe the consolidated financial statements set forth herein were compiled in accordance with GAAP and fairly depict the financial condition and results of operations of the Company.

We expect the near-term resolution of the issue will result in one of the following three outcomes:

(1) no changes to our current accounting treatment;
(2) consolidation of such wholly-owned companies in the future for financial statement purposes but not for tax purposes; or

(3) restatement of our prior financial statements with certain wholly-owned companies consolidated for financial statement purposes but not for tax purposes.

While the potential effect of the staff's proposed accounting change is still being evaluated, should a restatement be required, we expect that on a historical basis such consolidation and restatement would:

(1) increase our historical taxable net income available for distribution (as the tax status of the underlying entities will remain unchanged), which we believe is an important measure of our ability to generate recurring cash income distributions to our shareholders;

(2) increase our historical net increase in net assets resulting from operations;

(3) decrease our historical net investment income by the amount of interest and structuring income paid by such wholly-owned companies in excess of the amount of income that can be reported as dividend income based on taxable earnings and profits; and

(4) decrease our historical operating expenses by any resultant decrease in income incentive fees (partially offset by any resultant increased base management fees) paid to our Investment Adviser.

We believe the proposed change advocated by the SEC in the method by which net investment income would be reported would significantly decouple net investment income from taxable income and in our opinion make net investment income a less useful metric of both our profitability and distribution requirement. If we are required to consolidate holding companies of operating companies, we expect in conjunction with such change to calculate and report a non-GAAP measure titled adjusted net investment income adding back interest payments from the holding companies that are in excess of taxable earnings and profits that would for GAAP purposes be reported as return of capital distributions, and we believe that such adjusted net investment income would be a better measure of our economic operating profit than net investment income. We expect that adjusted net investment income for prior periods would be in excess of net investment income reported in prior periods due to the reduction in income incentive fees. The amount of any change to the items above is in the process of being evaluated

Here the company says the "review" and "discussions" disclosed in May-2014 achieved an "acceptable conclusion". Note the date: June 10, 2014.

This is the text from the full press release of June 10, 2014 –

Prospect Capital Corporation (NASDAQ: PSEC) ("Prospect", or "we") today announced that based on our discussions with the staffs of the Division of Investment Management ("IM") and the Office of the Chief Accountant ("OCA") of the Securities and Exchange Commission ("SEC"), Prospect will not be required to restate its prior period financial statements to consolidate certain wholly-owned or substantially wholly-owned holding company subsidiaries.

Prospect announced in its filing on Form 10-Q for the quarter ended March 31, 2014 on May 6, 2014 that the SEC staff had asserted certain wholly-owned holding companies were investment companies, such companies were required to be consolidated in the historical financial results and financial position of Prospect, and restatement of such financial statements was needed. At that time, Prospect disclosed that it disagreed with the views of the SEC staff and wished to appeal the conclusion through OCA. Based on those continued discussions with the SEC staff, Prospect has concluded the following:

1. Prospect's historical non-consolidation of certain wholly-owned and substantially wholly-owned holding companies will not require restatement of Prospect's prior period financial statements.

2. Upon the adoption of ASU 2013-08 by Prospect for the June 30, 2015 fiscal year, Prospect will begin consolidating on a prospective basis certain of its wholly-owned and substantially wholly-owned holding companies formed by Prospect in order to facilitate its investment strategy.

"We would like to commend the SEC staff for the prompt and professional manner in which they handled the situation," said Brian Oswald, Chief Financial Officer of Prospect. "We are pleased that Prospect was able consult with OCA and IM for an acceptable conclusion."

Excerpt from the Prospect Capital 10-K/A filed 03-Nov-2014 –

(This is the last time any detailed disclosure on the matter concluded in June 2014 was made.)

Basis of Consolidation

Under the 1940 Act, the regulations pursuant to Article 6 of Regulation S-X and ASC 946, we are precluded from consolidating any entity other than another investment company or an operating company which provides substantially all of its services to benefit us. Our consolidated financial statements include our accounts and the accounts of PCF and PSBL, our wholly-owned, closely-managed subsidiaries that are also investment companies. All intercompany balances and transactions have been eliminated in consolidation.

On May 6, 2014, we announced in our filing on Form 10-Q for the quarter ended March 31, 2014 that the SEC Staff had asserted certain of our wholly-owned holding companies were investment companies, such companies were required to be consolidated in our historical financial results and financial position, and restatement of such financial statements was needed. At that time, we disclosed that we disagreed with the views of the SEC Staff and wished to appeal the conclusion through the Office of the Chief Accountant. On June 10, 2014, based on those discussions with the Office of the Chief Accountant, we concluded the following:

- Our historical non-consolidation of wholly-owned and substantially wholly-owned holding companies did not require restatement of our prior period financial statements.

- Upon our adoption of ASU 2013-08 for the fiscal year ended June 30, 2015, we will begin consolidating on a prospective basis certain of our wholly-owned and substantially wholly-owned holding companies formed by us in order to facilitate our investment strategy.

The following companies will be consolidated: AMU Holdings Inc.; APH Property Holdings, LLC; Arctic Oilfield Equipment USA, Inc.; CCPI Holdings Inc.; CP Holdings of Delaware LLC; Credit Central Holdings of Delaware, LLC; Energy Solutions Holdings Inc.; First Tower Holdings of Delaware LLC; Harbortouch Holdings of Delaware Inc.; MITY Holdings of Delaware Inc.; Nationwide Acceptance Holdings LLC; NMMB Holdings, Inc.; NPH Property Holdings, LLC; STI Holding, Inc.; UPH Property Holdings, LLC; Valley Electric Holdings I, Inc.; Valley Electric Holdings II, Inc.; and Wolf Energy Holdings Inc.

Any operating companies owned by the holding companies will not be consolidated. We do not expect this consolidation to have any material effect on our financial position or results of operations.

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