

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

Quick Takes

OUR QUICK TAKES & OPINION ON THINGS WE OBSERVE,
MOSTLY WITHIN CAPITAL MARKETS

Companies in this report –

- **Advanced Drainage Systems – WMS**
- **Diamond Resorts International, Inc. – \$DRII and**
- **Apollo Global Management LLC – \$APO**

Please note: *If we alert you to existence of an undisclosed SEC probe, that means we filed a Freedom of Information Act (FOIA) request with the SEC on the company in question and have a response, in black-and-white, on government letterhead that supports our statement. The only thing we know at this time is that the probe(s) somehow pertains to the conduct, transactions, and/or disclosures of the companies referenced.*

Advanced Drainage Systems – WMS Advanced Drainage Systems has now missed its self-imposed deadline for filing a delayed 10-K filing. One cannot help but wonder just how bad the accounting problems are for this to happen. So far, the shares have barely reacted to this development. From the 8-K filed 22-Jun-2016 –

The Company is working diligently to file its Fiscal 2016 Form 10-K as soon as reasonably practicable, which management currently expects will occur by July 31, 2016.

For more, see our report published last week, "[Advanced Drainage Systems: SEC and Accounting Woes Worse Than Investors May Realize](#)"

Diamond Resorts International, Inc. – \$DRII
Apollo Global Management LLC – \$APO

Only a month ago, on 29-Jun-2016, Apollo Global Management agreed to buy Diamond Resorts for \$2.2 billion, or \$30.25 per share. Yesterday DRII announced it was postponing release of its 2016 2-Q earnings report

due to questions raised by its auditor about accounting practices. This is just a gut feel, so take it as such, but we're suddenly remembering that old adage that there's never just one cockroach.

You should expect an SEC investigation. We do. DRII's accounting news is cat-nip for SEC enforcement officials. While true that as of 14-Jun-2016, our research showed no signs of SEC investigative activity at DRII, that won't last. The question is whether the company will tell you – and when. Timing and content of such a disclosure gets even squishier with a deal in the balance.

With an accounting problem sufficiently large to delay reporting earnings, and an increased chance of an SEC probe, we were surprised to see Apollo was out there with some happy-talk yesterday on DRII's accounting news. A representative of Apollo was reported to have said the following in a statement yesterday –

"Based on our discussions with the company, we are confident this will not impact the timing of our acquisition on the terms previously announced."

We're not convinced. If anything, now we're suspicious. We say this because missing an earnings report is huge – especially when your auditor is behind it. These things typically don't get cleared up right away and restatement is now an added risk for DRII. Plus we have that pesky possibility of an SEC probe. Yet all we get is the "nothing to see here folks, back to your homes" response from Apollo? It doesn't add up. This one has our spider senses tingling; we're just not sure why yet.

We wrote on Apollo only two weeks ago, on 19-Jul-2016. That full note is below.

Apollo Global Management LLC \$APO *A disclosed SEC investigation is confirmed as on-going.* In a letter dated 08-Jun-2016, the SEC confirmed Apollo Global Management LLC's involvement in on-going enforcement

proceedings. Here is the relevant disclosure(s) –

From the Apollo Global Management 10-Q filed on 10-May-2016 –

As has been reported in the press, the SEC has focused recently on the disclosure to limited partners of the acceleration of certain special fees. The Company provided information about this topic to the staff of the SEC in connection with the SEC's periodic examination of the Company in 2013. On July 27, 2015, the Company received an informal request for additional information from the staff of the SEC on this topic and certain ancillary issues. The Company is fully and voluntarily cooperating with the informal requests and is in discussions with the SEC regarding a potential resolution of these matters. As of March 31, 2016, the Company has accrued a \$45.0 million legal reserve in connection with these matters.

The Company received an informal request for information from the staff of the SEC concerning the use of designated lender counsel with respect to financing buyout transactions, an issue recently covered in the press. The Company is fully cooperating with the SEC's request for information.

That the company disclosed these probes means management has judged the exposures potentially material to the entire company. What's troubling, however, is you cannot figure out timing on the second of the two probes referenced here. Merely referring to it as "an issue recently covered in the press" is lazy, at best. Your goal is to try to find out what's going on with both of these probes. While doing so, we recommend asking the company if there are only two probes. We have seen many companies with multiple SEC probes that only disclose one (or even two).

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