

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. Signs of undisclosed SEC investigative activity found at SolarCity, off-and-on, back to Aug-2014. The first Freedom of Information Act (FOIA) response indicating the most recent SEC probe(s) of SolarCity was dated 10-Jan-2017. On-going enforcement proceedings now confirmed on appeal four times since, most recently on 06-Aug-2019. For this reason, **Tesla, Inc. (SolarCity unit) remains on our Watch List** of companies with confirmed, undisclosed SEC investigations. On 17-Nov-2016, Tesla and SolarCity shareholders approved a merger of the two entities. Tesla, Inc. was previously on our Watch List due to an undisclosed SEC probe. Those with an interest in Tesla may find some of earlier reports helpful:

- [Why the Act of Tesla Confirming a Criminal Probe is So Meaningful](#), published 20-Sep-2018.
- [As Elon Musk Hyped and Happy-Talked Investors and Fans, Tesla Kept Quiet About a Year-Long Formal SEC Probe into the Model 3](#), published 14-Dec-2017.
- [New Data Reveals the SEC Was Already Investigating Tesla Before Any News Surfaced about an Autopilot-Related Crash](#), published 13-Jul-2016
- [Tesla / SolarCity: Governance Conflicts, Disclosure Shortcomings](#), published 27-Jun-2016

Disclosure Insight®

A May-2017 [Wall Street Journal](#) article revealed that SolarCity and SunRun (RUN) were part of an SEC investigation over disclosure of customer cancellations. See, [SEC Probes Solar Companies Over Disclosure of Customer Cancellations](#), 17-May-2017.

The following is from an [SEC Investigation Update we published on Sunrun, Inc. on 04-Jun-2019](#):

“Removed from Watch List. We were early and accurate in warning you about what turned out to be a 2017-2018 SEC investigation into Sunrun. Unfortunately, even with documents in hand, we still can’t discern exactly what it was about beyond “factors affecting the growth and revenue of Sunrun, Inc.”, which was cited in a related formal order of investigation we obtained from this probe. Full details and research history in [this] report.”

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask Tesla, Inc. what contact it has had with the SEC’s Division of Enforcement in the past two years regarding its SolarCity unit. The timing of SEC responses to us suggests that **Tesla management may have known about an SEC probe of SolarCity since at least Jan-2017.**

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

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.

We filed our first FOIA request on this company in **May-2014**. Below is the notable SEC response history for this company:

4-Aug-2014	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
22-Aug-2014	Appeal Response	Two-part appeal response: Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to those records remains blocked. Appeal to try to access certain records (previously identified) from a closed, but separate SEC probe(s) of this company was also denied on grounds they are internal SEC documents.
22-Apr-2015	FOIA Response with Document(s)	Documents released on closed SEC probe(s) of this company.
28-Sep-2015	Appeal Response	Appeal to access certain investigative records on closed SEC probe(s) of this company denied.
16-Mar-2016	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).
10-Jan-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
27-Jan-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
24-Aug-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
19-Sep-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
16-Apr-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
21-May-2018	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
21-Jun-2019	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
6-Aug-2019	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.

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 undisclosed by **Tesla, Inc. or SolarCity**.

Documents Acquired Under the Freedom of Information Act

Per an SEC letter of 22-Apr-2015, SolarCity was involved in two investigations our research shows were undisclosed.

- One SEC investigation of SolarCity opened Dec-2012 and closed Mar-2013.
- The second opened Mar-2014 and closed Nov-2014. 26 pages of records were released on an investigation that ended in 2014.

Per the SEC letter of 22-Apr-2015, “Moreover, research in our database index indicates that the subject of your request was listed in the matters under inquiry of SolarCity Corporation, which opened December 2012 and closed March 2013 and SolarCity Corporation, which opened March 2014 and closed November 2014.”

Per that same letter of 22-Apr-2015, the SEC also informed us, “we are withholding two 5-page matter detail reports in full.”

We have no other documents or information that would help the investor to better gauge the timing, duration, or scale of the above 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 Tesla’s SEC filings, back to Aug-2012, found no clear disclosures of SEC investigative activity involving SolarCity.

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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