

## Confirmed, Undisclosed SEC Investigation

### The Political Risk to Time Warner's Undisclosed SEC Probe

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. 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. Other interpretative guidance and disclosures appear below.

#### Here's what we published on Time Warner last week, on 17-Oct-2016 –

**Time Warner Inc. \$TWX Undisclosed SEC Probe Again Confirmed.** We've been tracking undisclosed SEC investigative activity at this company off-and-on since Sep-2012. In letter dated in May-2014 and Jan-2016, the SEC previously confirmed Time Warner Inc. was involved in unspecified SEC investigative activity. We found no disclosures of the same at that time. Now, in a letter dated 23-Sep-2016, the SEC has again confirmed this company's involvement in on-going enforcement proceedings. These proceedings remain undisclosed. In fact, searches of company filings all the way back to May-2012, found no clear disclosures of SEC investigative activity.

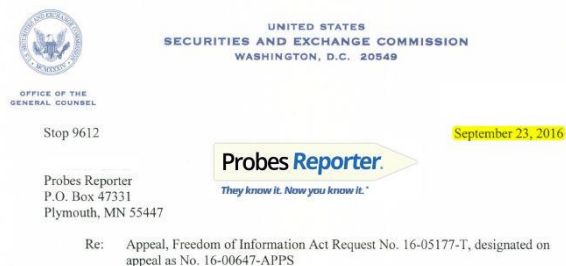
Below we include an excerpt from the SEC letter to us dated 23-Sep-2016.

**Our Take:** We have yet to see a big deal disrupted by a pesky undisclosed SEC probe. This one could be different.

The political opposition on the Time Warner/AT&T deal is huge; much bigger than we normally see. It may depend on who becomes aware of the undisclosed SEC probe and what they do with the information.

Too often we have seen companies that sat on SEC probes that investors almost certainly would have wanted to know about. The politicians may be the ones to make sure that doesn't happen this time. That could introduce volatility investors may not be expecting.

Depending on what's at issue, news of an undisclosed SEC probe could even contribute to killing the deal. We don't think that will happen, at least on its own (what with all those fees to be harvested and synergies to be realized!). But it's also not as remote the possibility as would be the case were we warning about an undisclosed SEC probe regarding a non-politicized pending deal. Watch this one closely.



This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Officer's denial of your August 5, 2016 FOIA request for certain investigative records concerning Time Warner, Inc. that the Commission has obtained or generated since August 4, 2014. By letter dated September 7, 2016, the FOIA Officer denied your request pursuant to FOIA Exemption (b)(7)(A). On September 21, 2016, you filed this appeal challenging the FOIA Officer's invocation of Exemption 7(A). I have considered your appeal and it is denied.

I have determined that the FOIA Officer correctly asserted Exemption 7(A).<sup>1</sup> There is a two-step test to determine whether information is protected under Exemption 7(A), whether: (1) a law enforcement proceeding is pending or prospective, and (2) release of information about it could reasonably be expected to cause some articulable harm.<sup>2</sup> We have confirmed with staff that releasing the withheld information could reasonably be expected to interfere with on-going enforcement proceedings.<sup>3</sup>

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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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