

#### 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.* The first Freedom of Information Act (FOIA) response indicating an SEC investigation was dated 05-Jul-2017. On-going enforcement proceedings confirmed on appeal multiple times since, most recently on 31-Jul-2019. For this reason, **Under Armour, Inc. remains on our Watch List** of companies with confirmed, undisclosed SEC investigations.

We now have clear evidence that Under Armour did not disclose two SEC investigations from the recent past, one of which remains ongoing as of 31-Jul-2019. Further, we now have a document that shows the SEC investigated Under Armour for the data breach disclosed in Mar-2018. That SEC investigation, which was never disclosed, ended on 15-Oct-2018. The danger that remains for investors is an older investigation that dates back to the summer of 2017.

- In the summer of 2017, [we first warned of an undisclosed SEC probe at Under Armour](#). In a report later published on 12-Dec-2017, we openly wondered if it somehow related to the abrupt CFO departure in Jan-2017 and repeated earnings misses since. See, [Take a Closer Look at Under Armour's Abrupt CFO Departure](#).
- Later, on 29-Mar-2018, on a Thursday, and right after investors had left for a three-day weekend, Under Armour dropped a bomb with the announcement of a sizable data breach. We wrote that up in this report, [Under Armour: It Appears the Data Breach Has Management Rattled](#), published 02-Apr-2018. We now have a document that shows the SEC investigated the data breach, even though the company never disclosed it.

### Disclosure Insight®

We're not so worried about the SEC investigation into the data breach. Yes, the company did not disclose that one. But it ended relatively quickly and Under Armour is not the first retailer to have faced such challenges.

Of greater concern is that pesky other undisclosed investigation that, again, we found first indications of in 2017. This was shortly after the company had an abrupt CFO departure and subsequent earnings misses. The worry is potential for undisclosed accounting and/or disclosure problems.

Rather than come clean with investors about that older SEC investigation we kept warning about, management instead talked-up 5-year plans and gave related media interviews. That makes it hard to assess whether the company is struggling because of fundamentals or undisclosed SEC pressure.

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

**Our full research history appears below.**

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 **Oct-2012**. Below is the notable SEC response history for this company:

21-Nov-2012	FOIA Response	No SEC investigative records found.
21-Oct-2013	FOIA Response	No SEC investigative records found.
19-Sep-2014	FOIA Response	No SEC investigative records found.
28-Aug-2015	FOIA Response	No SEC investigative records found.
16-Jun-2016	FOIA Response	No SEC investigative records found.
5-Jul-2017	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
21-Jul-2017	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
6-Feb-2018	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
16-Mar-2018	Appeal Response	Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked.
26-Oct-2018	FOIA Response	No SEC investigative records found. (Note: This response was not affirmed on appeal.)
7-Dec-2018	FOIA Response	FOIA Office sends letter indicating it is processing a file, or files, which were remanded to it from the SEC General Counsel for additional processing.
7-Dec-2018	Appeal Response	Two-part appeal response: Existence of on-going SEC enforcement proceedings officially confirmed on appeal; Access to records remains blocked. Records pertaining to closed, but separate SEC probe(s) of this company have been remanded for further processing. Response indicates release of those records would no longer be expected to interfere with enforcement proceedings.
11-Mar-2019	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).
25-Jun-2019	FOIA Response	SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities."
31-Jul-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 **Under Armour, Inc.**

### Documents Acquired Under the Freedom of Information Act

The only document we have is a one-page Case Closing Report dated 15-Oct-2018, with the heading, “Matter Name: Under Armour 2018 Data Breach.”

The SEC also denied our access to a 15-page Case Closing Recommendation from this investigation. We have no other documents or information that would help the investor to better gauge the timing, duration, or scale of this now closed matter.

*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 Jul-2015, found no clear disclosure of SEC investigative activity.

*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.*

To learn more about our research process, including how to best use this information in your own decision-making, [click here](#).

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