

#### Independent Investment Research Focused on Public Company Interactions with the SEC.

### Confirmed, Undisclosed SEC Investigation

**Watch List Status: Added to Watch List of Companies with Undisclosed SEC Investigations**

*Confirmed, Undisclosed SEC Investigation.* Signs of at least three undisclosed SEC investigations since 2017, including this most recent one. The first Freedom of Information Act (FOIA) response indicating the latest SEC investigation was dated 25-Nov-2019, and later confirmed in an appeal response dated 5-Mar-2020. This is a change from a response dated 12-Dec-2018, at which time no signs of ongoing SEC investigative activity were found. We have documents from earlier SEC investigative activity, summarized below. With new data reflected in this report, **XPO Logistics Inc. is added to our Watch List** of companies with confirmed, undisclosed SEC investigations.

Since we know there was at least one investigation in the recent past, we recommend those with an interest ask XPO Logistics Inc. what contact it had with the SEC's Division of Enforcement in the past two years. The timing of SEC responses to us suggests that **XPO Logistics Inc. management may have known about an SEC probe since at least Nov-2019.**

#### Disclosure Insight®

In presence of an undisclosed SEC investigation, we view any of the following as potentially related –

1. Restatements or accounting problems.
2. Problems with disclosures.
3. Departures / changes in key executive(s).
4. Delayed or amended filings.
5. Missing earnings expectations.
6. High stock price volatility.
7. Audit committee actions.
8. Change of auditor.
9. Cancels or stops having analyst events.
10. Dodges questions or only accepts via email.
11. Controversy enough to draw attention.
12. Negative news stories or analyst reports.
13. Registrations taking too long or pulled.

14. Larger-than-life CEO and/or senior executives.
15. Company does things inconsistent with economic reality.

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 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 **Nov-2015**. Below is the full notable SEC response history for this company.

25-Nov-2015	FOIA Response	No SEC investigative records found.
7-Sep-2016	FOIA Response	No SEC investigative records found.
19-Oct-2017	FOIA Response	Access to certain investigative records on closed SEC probe(s) of this company denied.
16-Jan-2018	Appeal Response	Appeal to access certain investigative records on closed SEC probe(s) of this company denied.
12-Dec-2018	FOIA Response	No SEC investigative records found.
25-Nov-2019	FOIA Response with Document(s)	Two-part response: 1) SEC denies access to records over concern their release, "could reasonably be expected to interfere with enforcement activities"; and, 2) Documents released on separate, closed SEC probe(s) of this company. However, access to certain of these investigative records was denied.
5-Mar-2020	Appeal Response	Two-part appeal response: <b>Existence of on-going SEC enforcement proceedings officially confirmed on appeal</b> ; Access to those records remains blocked. Appeal to try to access certain records (previously identified) from a closed, but <b>separate SEC probe</b> of this company was also denied on grounds they are internal SEC documents.

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 **XPO Logistics Inc.**

**Documents Acquired Under the Freedom of Information Act**

**Nov-2019:** The SEC releases a one-page Case Closing Report dated 15-Feb-2019, with the heading, "Matter No.: MB-03310, Matter Name: XPO Logistics, Inc." Relative to this investigation, the SEC also said, "We are withholding a six-page case closing recommendation and a two-page opening and closing narrative in full ..."

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.

**Oct-2017:** The SEC says, "We are are withholding a one page executive summary in full ...", on a matter on which no other documents or data are provided.

We have no other documents or information that would help the investor to better gauge the timing, duration, or scale of the above 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

A search of this company's filings for the past two years found no clear disclosure of SEC investigative activity.

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*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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