

Disclosure Games®

Bofl Holding had a Two-Year SEC Probe that Ended in June 2017 ***The probe was formal, at least two subpoenas sent to company***

Disclosure Insight® reports provide commentary and analysis on public company interactions with investors and with the SEC. They are heavily reliant on our expertise in using the Freedom of Information Act.

“Disclosure Games®” is a term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure. **For reasons outlined in this report, we have identified Bofl Holding, Inc. as a company playing Disclosure Games.**

“So we’ve not been asked any question or received any inquiry from any agency, including the SEC that would suggest concerns regarding financial misrepresentation, financial results, estimates, or other matters that would require an 8-K.”

-- CEO Greg Garrabrants, Earnings call, 02-Aug-2016

Summary and Opinion: Newly acquired SEC documents now remove all doubt about the existence of a recent SEC investigation at Bofl Holding (BOFI). This poses new challenges to the credibility of CEO Greg Garrabrants, a man who elevated whining about one’s critics into something of an art form. It also opens the question of what happens next. You’ve been misled, it’s not good – and the impact from the SEC probe could last.

Newly released documents show BOFI had an undisclosed SEC investigation that started in May-2015, became formal in Feb-2016, and involved at least two subpoenas sent to the company. It lasted just over two years, ending in Jun-2017 with no enforcement action.

The first subpoena sent to the company, in Feb-2016, was focused on related party transactions and a number of other items raised in an article posted to Seeking Alpha only a month earlier. The investigation appears to have expanded with a second subpoena, in Oct-2016, that sought records related to single-family residential loans extended to non-resident aliens.

After reviewing the documents from BOFI’s SEC probe, it strains credibility to imagine investors would not consider this investigation material and in need of disclosure. Yet, even with subpoenas in hand, Mr. Garrabrants and his cronies repeatedly issued carefully worded, passionately delivered denials about SEC activity. This was often accompanied by a deliciously colorful array of complaints about “short seller internet trolls fake news hit pieces.”

Because fraud is so hard to prove, the vast majority of SEC probes end without an enforcement action. That does not mean “nothing was found.” Further, whenever “the cops” show up, and start asking a bunch of questions, people cannot help but become nervous. Questionable practices get reined-in; everyone is on their best behavior. Rarely are investors told the details, but we have noticed a good number of earnings shortfalls occur the year after an SEC probe ends. Further, and we expect it here, information gathered in an SEC probe can be shared with other enforcement agencies better suited for follow-up. But don’t count on this management to tell you.

With no other signs of ongoing SEC investigative activity found, we are removing BOFI from our Watch List. The balance of this note summarizes the SEC documents we obtained along with a timeline to put them into context.

Mr. Garrabrants and his crew played well the properly outraged victims. It made for great theater. Applause, applause. The curtain has now fallen on that show.

Facts of Interest or Concern: We received 51 pages of lightly-redacted SEC investigative records from a now-closed, formal SEC investigation of Bofl Holding. They are posted to our website.

The following are key elements from the timeline of this investigation, as discerned from the documents we obtained, our research, and other public information.

28-May-2015: SEC investigation starts informally.

06-Jan-2016: Seeking Alpha piece published under pseudonym Aurelius, [Bofl: Undisclosed Related Party Dealings Found To Infect Audit Committee](#)

Note: If you have an interest in BOFI you should review this article. Many of the issues it raised later show up in the subpoena sent to the company on 22-Feb-2016 (see below). We know nothing more about, nor have we knowingly spoken to anyone connected with this person. We say this because it appears they were target of an intense legal effort by BOFI to unmask them.

11-Feb-2016: BOFI SEC investigation becomes formal.

22-Feb-2016: SEC subpoena sent to the company. Documents sought include –

- Practices, policies, disclosures, and internal controls concerning related-party transactions.
- Activities of the board, audit committee, and management concerning conflicts of interest.
- An array of requests for documents concerning loans made between Bofl and Encore Capital Group or Propel Financial Services, LLC.

25-May-2016: *Probes Reporter* first receives information from the SEC suggesting Bofl Holding was involved in unspecified SEC investigative activity, undisclosed at the time. This was confirmed by the SEC in a letter dated 31-May-2016. We published these findings on 09-Jun-2016.

02-Aug-2016: Greg Garrabrants, BOFI CEO, on earnings conference call –

“So we've not been asked any question or received any inquiry from any agency, including the SEC that would suggest concerns regarding financial

misrepresentation, financial results, estimates, or other matters that would require an 8-K.”

19-Oct-2016: Another subpoena sent to BOFI, to the attention of Eshel Bar-Adon, BOFI's Chief Legal Officer. Documents sought included –

- A wide range of requests related to underwriting standards, performance, and risks associated with Bofl's single-family residential loans (“SFR's”) extended to non-resident aliens (“NRA's”).

30-Jan-2017: Greg Garrabrants, BOFI CEO, on earnings conference call –

“Additionally, we currently do not foresee any future impact to the underlying business as a result of these frivolous lawsuits and the short seller internet trolls fake news hit pieces.”

03-Feb-2017: SEC response to *Probes Reporter* again confirms BOFI enforcement proceedings are ongoing. The SEC probe remained undisclosed.

31-Mar-2017: Eshel Bar-Adon, BOFI's Chief Legal Officer, as quoted in New York Post, [Feds probe Bank of Internet for possible money laundering](#)

“Due to false allegations made in short seller hit pieces and pending litigation, agencies routinely ask questions to assure themselves that such allegations are without basis,” Bar-Adon added in a written statement. “However, there are no material investigations that would require public disclosure and Bofl remains in good regulatory standing.”

27-Jun-2017: SEC investigation ends. Letter sent to the company indicates no enforcement action recommended.

No other documents were released on this probe so we don't know why it started or when the BOFI was first notified. Nine pages comprising of an SEC Case Closing Recommendation were withheld. A Case Closing Recommendation is the SEC's report that tells you why a probe was opened, what work was done, and the conclusions reached. To date, the SEC is adamant in its refusal to release even one word from its Case Closing Recommendations and similar documents, a practice for which we remain sharply critical of the agency.



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

Notes: Our **Disclosure Insight**® reports, like those coming from other financial news and data providers, provide the investing public with commentary and analysis on public company interactions between investors and/or with the SEC and other agencies. They are journalistically based in large part on our expertise with federal filings using the Freedom of Information Act.

“Disclosure Games”™ is a term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure.

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.

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 probes.

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.

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