

## That Pesky SEC Probe Rayonier Says is Not Material ... Well, it is. It's Formal Too, But They Don't Say That.



*Disclosure Insight™ reports provide commentary and analysis on public company interactions with investors and with the SEC.*

### Rayonier, Inc. \$RYN

**A disclosed SEC investigation is confirmed as on-going. Company says it's not material. We disagree. It's formal too. They left that part out.**

#### Facts of Interest or Concern:

- In a letter dated 21-Aug-2015, the SEC confirmed Rayonier's involvement in on-going enforcement proceedings.

On 10-Nov-2014, Rayonier issued a restatement and filed a number of amended filings. This was done to correct for errors in accounting and shortcomings in internal control over the periods covered by the amendments.

On 10-Dec-2014, the company filed an 8-K announcing that it had replaced its CFO. The former CFO was transitioned, "to the newly created position of Chief Accounting Officer."

According to the 10-K filed 02-Mar-2015, in Nov-2014, the SEC sent a subpoena to the company in an investigation related to the amended filings. But that 8-K which announced the CFO change (Dec-2014) was silent

on the SEC probe. In fact, we found all major filings between Nov-2014 up to the 10-K filed in Mar-2015, stayed silent on any sort of SEC probe.

Further, the issuance of subpoenas means the SEC probe is formal, but the company never says that.

#### **From the 10-K filed 02-Mar-2015 –**

"In November 2014, the Company received a subpoena from the United States Securities and Exchange Commission (the "SEC") seeking documents related to the Company's amended reports filed with the SEC on November 10, 2014. The Company is cooperating with the SEC and complying with the subpoena. **The Company does not currently believe that the investigation will have a material impact** on the Company's results of operations, cash flows or financial condition, but cannot predict the timing or outcome of the SEC investigation." **[Emphasis added]**

The 10-Q's filed 08-May-2015 and 07-Aug-2015 repeat in form and substance what was already disclosed in the 10-K. No new information was added; no updates provided.

In all cases since the initial disclosure made in the 10-K, the company repeats the claim that it does not believe the investigation will have a material impact.

**Our Take:** Rayonier gives you very little to work with here. The timing and disclosures surrounding the formal nature of the SEC probe is suspect to us. But above all and despite company reassurances to the contrary, we do know it's a material and on-going exposure. We also know it's a formal probe, though the company never says that. We explain.

**How do we know it's a formal probe?** Even though not stated as such in the related disclosures, subpoenas were referenced. Only formal SEC probes involve subpoenas.

What's troubling to us about the subpoena is this: The SEC doesn't typically start its investigations by issuing subpoenas. Yet Rayonier says it received a subpoena the same month it restated and issued amended filings.

We find that timing a bit suspect. It all feels pretty quick to us. It also makes us wonder if, perhaps, there already was an SEC investigation that somehow triggered the restatement.

The typical routine in an SEC probe is for an enforcement official to contact the company and see if it's willing to voluntarily provide certain documents and information. Failing that, or if the parties involved are in a position where providing information without a subpoena could be harmful (e.g., a large vendor to a company under investigation), then subpoenas could be issued. At that point, and only at that point, it's a formal probe. Subpoenas are never issued as part of informal SEC probes.

It's worth asking the company when it first had contact with the SEC's Division of Enforcement regarding this probe. We already know they sat on a formal probe for about four months before disclosing some aspects of it. We wouldn't put it past them to have known of an informal SEC probe that started much sooner, but had become formal by the time of the Nov-2014 restatement.

**How do we know the probe is material, especially in light of the company repeatedly saying it is not?**

As we say time and again, public companies are loath to disclose bad news of any kind. Further, they are generally only required to disclose matters deemed material to investors. But management is the judge of what would be material to you. You, the lowly investor, have no say in this.

Like the child who is reluctant to let a parent know when he or she did something wrong, management teams are inherently conflicted when it comes to letting you know about bad stuff that either occurred on their watch, or they may have caused.

We say you should trust this management team's actions, not their smooth-sounding words of assurance. Their actions – that they disclosed the SEC probe in the first place – tell you this is a material exposure. Trust that.

The fact they sat on the SEC probe, keeping it from investors for four months, told you something changed to cause them to believe it had to be disclosed. Trust that.

Finally, the fact the company repeats the disclosures about the SEC probe, even absent any meaningful update (which taxes credibility to think there's absolutely nothing to report), removes all doubt about materiality. One more time we say: trust that!

[To learn more on our process and what our findings mean, click here](#)

*Notes: The SEC did not disclose the details on investigations referenced above. 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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