

Keurig Green Mountain Coffee Roasters (GMCR)

The Now-Closed SEC Probe Was Bigger Than We Knew.
Auditor Named in a Parallel Probe. Auditor's Still There.



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

Keurig Green Mountain Coffee Roasters

Facts of Interest or Concern: Information recently received from the SEC tells us the now-closed 4-year SEC probe of the then-Green Mountain Coffee was much bigger than the company let on and, to our great surprise, saw the auditor named in a separate matter.

The scale of SEC involvement was not disclosed by the company and routinely side-stepped by its spokespeople. Analyst supporters were happy to go along. A separate investigation of PricewaterhouseCoopers was never disclosed and remained unknown to investors until today. PricewaterhouseCoopers is still GMCR's auditor.

Going back to 2010, when Disclosure Insight was a stand-alone company, we were negative on Green Mountain over concerns about its accounting, an SEC probe into revenue recognition, and weak disclosures.

Since Jun-2012, now as Probes Reporter, we've been trying to get records on GMCR. After working our way through the SEC maze, we finally have some good, but largely incomplete, information.

The biggest reveal is we now know there were two SEC probes at work here; one of Green Mountain, the other of its auditor. We can sum it up best with the following excerpt from a letter the SEC sent to us on 06-Apr-2015 regarding the company --

"After an additional search of our computerized records, we have identified non-public records, **In the Matter of Green Mountain Coffee Roasters dated September 2010 to December 2014** (9 boxes of records, 7 folders, and 10.2 GB of electronic files), and **In The Matter of PricewaterhouseCoopers LLP dated February 2013 to December 2014** (1 file folder and 44.4 MB" [emphasis added]

As compared to others in our database, this was no small SEC investigation. According to estimates published by Lexis / Nexis, 10 GB of electronic files would equal over 600,000 pages of pages in MS-Word. Among records cited were 18 transcripts of testimony (3,310 pages).

Disclosures related to this probe were sweeping in nature, offering little to investors trying to assess what was really going on here. They definitely did not give indication of the scale, or that the auditor was involved, which we now know from the SEC.

From the GMCR 10-K filed 21-Nov-2013 –

As previously disclosed, the staff of the SEC's Division of Enforcement informed us that it was conducting an informal inquiry into matters at the Company. At the direction of the Audit and Finance Committee of our Board of Directors, we are cooperating fully with the SEC staff's inquiry. At this point, we are unable to predict what, if any, consequences the SEC inquiry may have on us. However, the inquiry may continue to result in considerable legal expenses, divert management's attention from other business concerns and harm our business. If the SEC were to commence legal action, we could be required to pay significant penalties and/or other amounts and could become subject to injunctions, an administrative cease and desist order, and/or other equitable remedies. The resolution of the SEC inquiry could require the filing of additional restatements of our prior financial statements, and/or our restated financial statements, or require that we take other actions not presently contemplated. We can provide no assurances as to the outcome of the SEC inquiry.

From the GMCR 10-K filed 19-Nov-2014 –

On October 16, 2014, the staff of the SEC's Division of Enforcement notified the Company that it had concluded its previously disclosed inquiry into matters at the Company without recommending enforcement against the Company or any of its current or former employees.

Note: The SEC saying the investigations ended in Dec-2014 as opposed to Oct-2014 could be attributable to internal SEC technicalities involved with shutting-down large, multi-year investigations.

Coke and a Smile for Green Mountain

Brian P. Kelley joined Keurig from Coca-Cola as President, Chief Executive Officer and Director in Dec-2012. According to the SEC, the investigation of the auditor started in February 2013, shortly after the arrival of Mr. Kelley. In Feb-2014 Coca-Cola said it was buying a 10% stake in GMCR. The shares spiked on the news.

The choice to not disclose the expansion of the SEC probe to the auditor occurred on Mr. Kelley's watch.

Side-stepping the SEC Probe, Attacking the Shorts

In response to a very public short position taken by prominent hedge fund manager David Einhorn of Greenlight Capital, a company spokesperson was quoted in Dec-2011 as saying the following --

Green Mountain spokeswoman Suzanne DuLong rejected the suggestion the company has given short-shrift to complaints about its accounting practices.

"The audit committee, with the assistance of counsel and a forensic accounting firm, completed its investigation of accounting practices at the company in December 2010," she said. "Most recently, as our CEO and president, Larry Blanford reported in the November 2011 earnings call: 'We are confident there is no misconduct, there is no wrongdoing.'"

(Source, [Reuters, Exclusive: An inside look at David Einhorn's "big short"](#), 20-Dec-2011)

Our Take: There's no excuse; the SEC's opening of a separate investigation of the auditor should have been disclosed. Soon as possible after, the auditor should have been replaced. That neither happened speaks volumes.

This company has long had the risk profile and disclosure practices that we recommend avoiding. Though not a great surprise to us, the SEC probe was much bigger than they ever let on. That's deceptive. Worse, the chance for a clean slate with Mr. Kelley's arrival now appears to have been sacrificed before the Coca-Cola altar.

Why No Enforcement Action is Not an All-Clear

An enforcement action is a big step for the SEC. Just as most litigation settles out of court, most SEC probes get resolved without enforcement action recommended. In the contest between prosecutor and defense counsel, ending an SEC probe often comes at a price.

SEC probes can easily and routinely cause companies to change their accounting and procedures in ways that often don't show up well after the probe is over. It's kind of like how you reflexively pull your foot off the gas when seeing a cop on the highway; you're more careful. So too are companies when the SEC comes a-sniffin'. This impact would likely have been more obvious had Coca-Cola not galloped on in to town (with a smile, of course).

We routinely encounter investors, particularly the pom-pom toting variety, too willing to assume the end of an SEC probe means an “all-clear” or “clean bill of health” has been issued. There are no such things at the SEC. In fact, here’s what the SEC sends to all companies when it ends a formal probe without recommending enforcement action --

“The Commission ... may advise a person under inquiry that its **formal investigation has been terminated** ...

Even if such advice is given, however, it **must in no way be construed as indicating that the party has been exonerated** or that no action may ultimately result from the staff’s investigation of that particular matter.” [Emphasis added]

We have yet to find a company that includes this in their disclosures. GMCR left it out too.

Evasive Disclosure Practices

The choices to not disclose any meaningful details on the SEC probe were bad enough. Initially that fell on the old management team. Unfortunately, meaningful disclosure shortcomings continued under Mr. Kelley.

While possible Mr. Kelley’s team did not know the SEC probe had expanded to become a parallel probe of the company’s auditor, it challenges us to imagine how the company would not have known.

Understandably, the stakes for making sure the Coca-Cola investment “worked” were high, and likely remain so. But we’d much rather have seen Mr. Kelley’s team earn points for being forthcoming with investors back when the SEC expanded its probe to become a parallel probe of the auditor too. Instead, this management team now rightly earns our criticism. They blew a freebie here.

The Auditor Stays – Another Free Pass Blown

We find it striking that PricewaterhouseCoopers remains the company’s auditor after all that’s happened here. We see auditors get swept up in their clients’ investigations all the time. But in 15 years of doing this kind of work, it’s rare we see a company’s auditor named in a parallel investigation to the audit client itself.

If only for the sake of truly wanting all accounting issues behind GMCR, Mr. Kelley his board should have given PricewaterhouseCoopers the boot first chance they got. This too was a freebie blown. With the recent accounting history, and a “new sheriff in town”, an auditor change would not have made a ripple with investors. Instead, we’re left with the sense that this whole set up feels a bit too, well ... it feels a bit too cozy.

The SEC’s Role in the Cover-Up

As usual, the SEC is doing its part to protect public companies and their auditors (and the SEC staff itself) by refusing the release the Case Closing Recommendations related to the two SEC investigations cited above.

By releasing the Case Closing Recommendations, investors would FINALLY learn why these investigations were opened, what took place, and what conclusions were reached. The SEC remains adamant; investors cannot see even one word from its Case Closing Recommendations. (Mr. Kelley should send the SEC flowers or something.)

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.

Visit <https://probesreporter.com/legal> to read important disclosures applicable to our work or to learn more about becoming a premium-level subscriber. Or call 763-595-0900 to learn more.