Under Armour Inc. Pulls Sales Forward, SEC and Stockholders Push Back

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As the culmination of an SEC investigation into Under Armour Inc.'s "pull forward" practice leads to charges, Under Armour agrees to cease and desist and settles for $9 million.

Following an investigation dating back to 2015, the SEC claimed Under Armour misled investors by not disclosing the reason for its growth in revenue and what that meant for the business. The SEC charged Under Armour with violations of "antifraud provisions of Section 17(a)(2) and (3) of the Securities Act of 1933, as well as certain reporting provisions of the federal securities laws."

The SEC alleged Under Armour, faced with an inability to meet its estimated revenues, began pulling forward "existing orders that customers had requested be shipped in future quarters." Under Armour allegedly accelerated sales for six quarters, totaling $408 million. This practice allowed Under Armour to claim that it was on target to reach expected revenues. However, accelerating these sales meant that Under Armour's future revenue was uncertain.

The SEC did not take issue with the pulling forward of sales, but with Under Armour's failure to disclose to its investors the reason for its apparent "revenue growth." The Director of the SEC's Denver Regional Office reiterated that the issue in this case was that Under Armour attributed its "financial results" to other factors which was a misstatement of material information. Ultimately, investors should have been informed that the reason for the company's financial growth was reliance on accelerated sales.

The SEC is not the only party to challenge Under Armour's failure to disclose its acceleration of sales—stockholders did too. On November 4, 2019, Under Armour acknowledged the SEC Investigation. Unsurprisingly, a stockholder class action quickly followed. Two days later, on November 6, a stockholder proposed a class action, *Patel v. Under Armour Inc. et al*. The complaint concerns investors who acquired Under Armour securities between August 2016 and November 2019 and seeks damages resulting from Under Armour's alleged violations of the Securities Exchange Act. Specifically, the Complaint states that Under Armour is liable to class members because it, as alleged by the SEC:

1. Pulled forward sales for six quarters to meet net revenue growth;
2. Failed to notify its investors that it was under investigation by both the SEC and the U.S. Department of Justice; and

Filed reports and disseminated "materially false and misleading" information it knew investors and potential investors would, and in fact did, rely on to purchase "Under Armour securities" at prices now found to have been "artificially inflated."

While the recent settlement with the SEC resolved the government's claims against Under Armour, the proposed class action is still in initial proceedings and remains pending in the U.S. District Court for the District of Maryland.

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