

[Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— Theranos CEO gives up majority voting control after being caught in years-long fraud, \(Mar. 14, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [John Filar Atwood](#)

Theranos Inc. CEO Elizabeth Holmes has agreed to relinquish majority voting control of the company and to reduce her equity stake as part of the resolution of charges against her, Theranos, and the former company president Ramesh Balwani. The SEC alleged that the company and the two individuals coerced more than \$700 million from investors in a years-long fraud in which they exaggerated the company's financial performance.

In a [complaint against Theranos and Holmes](#), and a separate [complaint against Balwani](#), the SEC claimed that they made false and misleading statements about the company's portable blood analyzer. They deceived investors by, among other things, making false statements to the media, hosting misleading product demos, and overstating the extent of the company's relationships with commercial partners and government entities, to whom they had also made misrepresentations.

Faster blood analysis. Specifically, they said that their technology could collect and transport a fingerstick sample of blood, place it on a special cartridge which could be inserted into Theranos' proprietary analyzer, and generate results that the company could transmit to the patient or care provider. The SEC alleged that they told investors that the company's analyzer could provide blood testing that was faster, cheaper, and more accurate than existing blood testing laboratories.

The Commission believes that at all times Holmes, Balwani, and Theranos knew that in clinical trials the analyzer performed only 12 tests of the over 200 tests on Theranos' published patient testing menu. The company actually conducted its tests on commercial analyzers made by others, according to the SEC.

Not used by Department of Defense. The Commission also charged Theranos, Holmes, and Balwani with falsely claiming that the company's products were used by the Department of Defense in Afghanistan, and that they expected more than \$100 million in revenue in 2014. The product was never used by the Defense Department, the SEC alleged, and was responsible for only about \$100,000 in revenue in 2014.

In a [news release](#), Jina Choi, the director of the SEC's San Francisco office, said that the case should be instructive for other Silicon Valley companies with potentially disruptive products. She emphasized that tech companies must tell investors what the products can actually do, not what they hope it will do in the future.

Theranos and Holmes agreed to settle the fraud charges without admitting or denying the allegations. Holmes will pay a \$500,000 penalty and will be barred from serving as an officer or director of a public company for 10 years.

Loss of voting control. Holmes also agreed to return the 18.9 million shares that she obtained during the alleged fraud, and to relinquish her voting control of Theranos by converting her Class B common shares to Class A shares. The SEC noted that due to the company's liquidation preference, if Theranos is acquired or liquidated, Holmes would not profit from her ownership until \$750 million is returned to defrauded investors and other preferred shareholders.

The SEC plans to litigate its claims against Balwani in federal district court in the Northern District of California. The Commission seeks an order enjoining Balwani from future violations of the securities laws, requiring Balwani to pay a civil monetary penalty, prohibiting him from acting as an officer or director of any publicly-listed company, and providing other appropriate relief.

Attorneys: Jessica Wai-Chung Chan for the SEC.

Companies: Theranos Inc.

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