

SEC Charges CEO of Online Entertainment Company with Defrauding Investors

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Securities and Exchange Commission v. Robert F.X. Sillerman, No. 19-civ-6052 (S.D.N.Y. filed June 28, 2019)

The Securities and Exchange Commission today charged New Hampshire resident Robert F.X. Sillerman, the former CEO of Function(x), Inc., with orchestrating an offering fraud and diverting offering proceeds to repay loans he had previously made to the company.

According to the SEC's complaint, Function(x), Inc., formerly an online publishing and entertainment business, incurred significant losses during the first quarter of 2017. To raise capital and fund its operations, Function(x) completed a public securities offering in February 2017, which brought in \$4.8 million from investors. The complaint alleges that Sillerman fraudulently diverted \$500,000 of the offering proceeds to repay certain loans he had made to Function(x). Then, in April and May 2017, Sillerman allegedly led efforts to raise additional money for Function(x) through a private securities offering. The SEC's complaint alleges that to induce investments in this offering, Sillerman falsely claimed that two celebrities had agreed to invest in the company. The SEC further alleges that Sillerman created phony subscription documents, with forged signatures, purportedly from the two celebrities. Function(x) publicly announced that the offering had raised \$10 million which would be used for working capital and corporate expansion. In reality, however, the complaint alleges that Function(x) raised only half that amount and that Sillerman diverted all of the proceeds to his personal bank accounts, as further repayment of loans he had made to Function(x). Throughout his fraudulent scheme, Sillerman also allegedly ignored Function(x)'s internal accounting controls and failed to obtain approval to use offering proceeds to repay his loans.

The SEC's complaint against Sillerman, filed in U.S. District Court for the Southern District of New York, charges Sillerman with violations of the antifraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder. Sillerman is also charged with violating the books and records and internal accounting control provisions of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder and aiding and abetting the company's reporting violations under Section 13(a) and Rules 12b-20 and 13a-11 of the Exchange Act. Sillerman has agreed to settle the SEC's charges without admitting or denying the allegations in the complaint. He has agreed to a permanent director-and-officer bar and a penalty of \$179,000. Sillerman, who is a debtor in a Chapter 11 case, has agreed to pay the civil penalty pursuant to a Chapter 11 plan that is approved in his bankruptcy case. The settlement is subject to court approval.

Previously, on November 15, 2018, the SEC [issued](#) a settled order revoking the registration of the securities of Function(x) for failing to comply with its obligation to file periodic reports with the Commission.

The SEC's investigation was conducted by Breanne Atzert, Helaine Schwartz, Daniel Maher, Jeffery Anderson and Peter Rosario, with assistance from Patricia Schrage. The case was supervised by Lisa Deitch and Antonia Chion.