

Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION
—E.D. N.Y.: Operator of electronic wallets in Russia did not make
false and misleading statements related to compliance with Russian
regulators, (Nov. 6, 2023)

Securities Regulation Daily Wrap Up

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By Elena Eyber, J.D.

Investors' claims were dismissed for failure to adequately plead that Qiwi and its officers made misstatements or omissions of material fact or that Qiwi acted with scienter.

The federal district court in New York granted Qiwi's motion to dismiss investors' claims, alleging that Qiwi, an operator of electronic wallets in Russia, and its officers, were liable for making false and misleading statements related to compliance with Russian regulations. The court dismissed investors' Section 10(b) of the Exchange Act and Rule 10(b)-5 claims, finding that investors failed to adequately plead that Qiwi and its officers made misstatements or omissions of material fact or that they acted with scienter. The court also dismissed investors' claims of control-person liability under Section 20(a) of the Exchange Act against the officers because investors failed to adequately plead a primary violation of the Exchange Act ([In re Qiwi PLC Securities Litigation](#), November 3, 2023, Kovner, R.).

Alleged false and misleading statements. Plaintiff alleged that defendants made numerous false or misleading statements during the class period because defendants allegedly failed to disclose that: (i) Qiwi's internal controls for reporting and recordkeeping were ineffective; (ii) Qiwi was failing to meet the Central Bank of the Russian Federation (CBR) reporting and recordkeeping requirements; (iii) Qiwi's "lax identification requirements and payment processing controls" hid illegitimate online betting transactions; (iv) regulations increasing identification requirements and restricting illegitimate online gambling transactions were negatively impacting Qiwi's revenue; (v) Qiwi was being audited by the CBR and would be unable to pass the audit; (vi) Qiwi would be fined by the CBR, be subject to certain restrictions on making payments to foreign merchants and transferring money to pre-paid cards, and would not be in "a prime position to process electronic bets in Russia"; and (vii) Qiwi would lose significant revenue from its legitimate transactions as a result of those restrictions.

Section 10(b) claims. Plaintiff alleged that all defendants violated Section 10(b) of the Exchange Act and Rule 10(b)-5 by preparing, disseminating, or approving misleading statements that caused class members to buy Qiwi securities at artificially high prices. The court dismissed plaintiff's claims, finding that plaintiff failed to adequately plead that the defendants made misstatements or omissions of material fact or that defendants acted with scienter.

Materially false statements or omissions. The court held that plaintiff failed to adequately plead materially false statements or omissions. First, the court found that plaintiff failed to plead with particularity that defendants made actionable statements based on alleged unlawful acts or recordkeeping deficiencies. Second, the court found that plaintiff failed to adequately allege actionable statements related to the CBR audit. Third, the court found that plaintiff failed to allege that defendants made actionable statements about negative impacts of regulations on Qiwi's business.

Scienter. Next, the court held that plaintiff's Section 10(b) and Rule 10b-5 claims also failed because plaintiff failed to plead facts that support a strong inference of scienter for any defendant. First, the court found that plaintiff failed to allege motive to commit fraud. Second, the court found that plaintiff failed to adequately plead conscious misbehavior or recklessness. Third, the court found that plaintiff failed to adequately plead corporate scienter.

Scheme liability. Further, the court held that a claim under subsections (a) and (c) of Rule 10b-5, which prohibit employing any device, scheme, or artifice to defraud, and engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit, also failed. The court dismissed the claims because plaintiff appeared to rely on the first 248 paragraphs of the complaint instead of “articulating with precision the contours of an alleged scheme to defraud investors, or which specific acts were conducted in furtherance of it,” and because plaintiff did not adequately plead scienter.

Control-person liability. Lastly, plaintiff alleged that the individual defendants violated Section 20(a) of the Exchange Act because they were controlling persons at Qiwi that had the power to and did influence and control Qiwi’s decision to disseminate misleading statements. The court dismissed plaintiff’s claim because plaintiff cannot plead a claim of control-person liability under Section 20(a) of the Exchange Act without a primary offense.

The case is [No. 1:20-cv-06054-RPK-CLP](#).

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Companies: QIWI PLC

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