Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: Archegos execs charged with civil, criminal fraud, (Apr. 27, 2022)

Securities Regulation Daily Wrap Up

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By David Yucht, J.D.

Federal prosecutors, the SEC, and the CFTC charged four top executives at Archegos, including owner Bill Hwang, with running a manipulation scheme that caused billions in losses when it inevitably collapsed.

The SEC filed civil charges against Sung Kook (Bill) Hwang, the owner of family office Archegos Capital Management, LP, for organizing an illegal scheme which resulted in billions of dollars in losses. Additionally, the SEC brought charges against CFO Patrick Halligan, head trader William Tomita, and Chief Risk Officer Scott Becker for their roles in the scheme. As a result of the alleged stock manipulation, Archegos grew dramatically over the course of a year, building what SEC Enforcement Director Gurbir Grewal called a "$36 billion house of cards" (*SEC v. Hwang* , April 27, 2022).

In parallel proceedings, the U.S. Attorney's Office in Manhattan announced criminal charges for similar conduct. Hwang and Halligan were arrested, and guilty pleas of Tomita and Becker were unsealed. Deputy Attorney General Lisa O. Monaco said, "Today's announcement demonstrates the department's unwavering commitment to hold accountable individuals who distort and defraud our financial markets, including those who occupy the C-Suite."

The Commodity Futures Trading Commission also announced civil fraud charges against Archegos and Halligan, along with settled charges against Tomita and Becker.

Market manipulation scheme alleged. According to the SEC's 40-page complaint, filed in federal district court in Manhattan, a fraudulent scheme existed that included interlocking deceptive acts and misconduct, through false and misleading statements to security-based swap counterparties and prime brokers and manipulative trading, which artificially moved the market increasing Archegos's assets under management from around $4 billion to over $36 billion in just under six months. To continue growing, and otherwise maintain the gains it had achieved through its ramp-up of exposures, Archegos needed to ensure the value of those exposures would continue to appreciate, and its counterparties would continue to extend credit. Archegos did not rely on ordinary market forces but engaged in a scheme to manipulate the market for the securities of the issuers that represented Archegos's top 10 holdings.

The complaint alleges that from approximately March 2020 until March 2021, Hwang purchased on margin billions of dollars of total return swaps. Security-based swaps enable investors to acquire huge positions in equity securities by only posting relatively small amounts up front. Hwang is alleged to have entered into swaps to artificially and dramatically inflate security values, inducing investors to buy these securities at overvalued prices. As a result, Archegos grew rapidly, increasing in value from about $1.5 billion with $10 billion in exposure in March 2020 to over $36 billion with $160 billion in exposure in March 2021. The SEC also alleges Archegos misled its 12 counterparties about its exposure, concentration and liquidity, to obtain increased trading capacity and continue buying swaps in its most concentrated positions, driving up share prices. However, by March 2021, price declines allegedly resulted in a substantial number of margin calls Archegos could not meet. Archegos's collapse caused billions of dollars in credit losses among Archegos's counterparties.

Remedies sought. The SEC's civil complaint charges Hwang and the others with six counts involving antifraud and other provisions of the federal securities laws. The complaint seeks permanent injunctive relief, return of allegedly ill-gotten gains, and civil penalties. The SEC also seeks to bar individual defendants from serving as public company officers and directors.

Chair Gary Gensler said the Archegos collapse “demonstrated how activities by one firm can have far-reaching implications for investors and market participants. … "The failure of Archegos underscores the importance of our ongoing work to update the security-based swaps market to enhance the investor protections, integrity, and transparency of this market.”

The case is No. 22-cv-03402.

Attorneys: Jack Kaufman for the SEC.

Companies: Archegos Capital Management, LP.

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