

Corporate & Financial Weekly Digest

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[Allegations of Corporate "Hijacking" State Fraud Claim Against Corporate Attorney](#)

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The U.S. District Court for the Southern District of New York recently denied defendant Nicolette Loisel's motion to dismiss a Securities and Exchange Commission complaint against her and four co-defendants, which alleged, among other things, violations of Section 10(b) of the Securities Exchange Act and Rule 10(b)(5), promulgated thereunder.

In its complaint, the Securities and Exchange Commission alleged that Ms. Loisel and co-defendant, Roger Shoss, were part of a "complex securities fraud ring" that carried out a scheme between 2003 and 2007, in which nearly two dozen defunct public corporations were "hijacked." The scheme included a series of maneuvers to bring void or inactive corporations back into existence, such as changing the corporate names and obtaining new Committee on Uniform Securities Identification Procedures (CUSIP) numbers and ticker symbols for the corporations. The SEC alleged that defendants made fraudulent statements to various secretaries of state, the Nasdaq Corporate Data Operations and the Standard & Poors CUSIP Bureau, and improperly utilized certain exemptions from securities registration requirements. The defendants allegedly caused the "hijacked" corporations to offer and improperly sell unregistered shares into the market.

In moving to dismiss the SEC's complaint, Ms. Loisel argued that the SEC had not pled its claim of securities fraud with the heightened level of particularity required under Federal Rule of Civil Procedure 9(b), which requires that a complaint (1) specify the statements that the plaintiff contends were fraudulent; (2) identify the speaker; (3) state where and when the statements were made; and (4) explain why the statements were fraudulent.

The court found that the complaint "amply complies" with the heightened pleading standard required for fraud claims. Specifically, the court found that the following allegations sufficiently particularized the SEC's fraud charges: (1) Ms. Loisel took part in a fraudulent scheme in which her role included making false and fraudulent statements in Transfer Agent Verification forms, in opinion letters, and in documents sent to the CUSIP Bureau and Nasdaq Reorganization; (2) Ms. Loisel opined that corporations were exempt from registration requirements of the securities laws based on information that she knew to be false; (3) Ms. Loisel sought to change CUSIP identification numbers and stock tickers in order to pass off private corporations as reactivated public corporations in an effort to allow the sale of unregistered stock; and (4) Ms. Loisel knew that a representation in "Rule 504 opinion letters"—that all investors of the relevant securities resided in Texas—was false at the time she made the representation.

The court rejected the argument that the SEC's allegations were insufficient for failing to identify the date of the alleged misrepresentations, instead finding that the above allegations provided "detailed notice of the charges leveled against [Ms. Loisel]." (*S.E.C. v. Boock*, 2010 WL 2398915 (S.D.N.Y. June 15, 2010))

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