

VirnetX Class Accuses Big Brokers of Naked Short Sales

Investors claim in a federal class action that Goldman Sachs and other banking giants suppressed the share price of VirnetX, "a leader in mobile security technology."

[CHRIS FRY](#) / December 19, 2016



HACKENSACK, N.J. (CN) – Investors claim in a federal class action that Goldman Sachs and other banking giants suppressed the share price of VirnetX, "a leader in mobile security technology."

In addition to Goldman Sachs, the Dec. 14 [complaint](#) in Bergen County Superior Court takes aim at Merrill Lynch, Credit Suisse, TD Ameritrade, Charles Schwab and the Bank of New York Mellon. The case is the Top Download for Courthouse News on Monday.

As they have with countless other stocks, according to the complaint, the brokerages schemed to execute naked short sales for shares of VirnetX, with no intention of delivering stock to settle the short sales.

"Instead, these prime brokers have intentionally failed to deliver VirnetX stock to settle the short positions so as to reap huge profits and ingratiate themselves to their hedge fund and corporate clients," the complaint says.

Typical short sales involve the sale of securities an investor does not actually own, but instead borrowed for delivery with the anticipation that the price of the stock would decline, netting a profit. Though this practice is legal, the sale becomes an illegal naked short sale if the brokerage fails to deliver sales of the shorted stock by the settlement date.

Two New Jersey-based investors, Lisa Karoon and Manickam Ganesh, say the brokers have been naked short selling shares of VirnetX since at least Feb. 1, 2013.

VirnetX vice president Greg Wood has complained about this illegal activity several times to the Securities and Exchange Commission, according to the complaint, which specifies that Wood sent several emails in March this year to SEC officials about the conduct.

Part of what has allowed the brokers to disguise much of their naked short selling, the class says, is their relationship with the Depository Trust and Clearing Corporation, or DTCC. "The DTCC is a powerful unregulated corporate institution that monopolizes the clearance and settlement of all United States securities transactions," the complaint states.

This is contributing to, but is not the sole cause of, VirnetX's stock losses, shareholders say.

"In addition, these prime brokers have 'painted the tape,'" the complaint states. "They have manipulated the market and fixed the price of VirnetX stock through massive 'dumping' of VirnetX shares at key moments, all so as to create negative market sentiment, a 'piling' of short sales, and depression of the price of the stock so as to further their own short sale strategies and those of their hedge fund and corporate clients."

Wood, the VirnetX VP, is said to have noted this practice as well. In a February email to the SEC, Wood supposedly noted that 160,000 shares of VirnetX were dumped in the last 10 minutes of trading, which represented over 10 percent volume for the full trading day.

The class says such manipulations dramatically distorted the VirnetX stock price.

A drastic drop from some \$35 a share to \$3 occurred, according to the complaint, "despite the market's upward movement; despite what had been an expected rise of the VirnetX shares to a projected \$60 range; and despite the fact

that VirnetX has been awarded \$302.4 million by a jury in patent litigation against Apple.”

The banks have faced millions of dollars worth of fines for this very conduct, according to the complaint, but “federal regulations and laws have not diminished Defendants’ insatiable appetite for illicit profits.”

“Apart from large fees, commissions and interest that they charged, the ability and willingness of defendants to engage in naked short selling enhanced their competitiveness with hedge fund and corporate clients, who wanted to manipulate the market and depress the price of VirnetX stock,” the complaint states.

The class also accuses the brokers of having concealed their illegal tactics by taking affirmative steps to keep the VirnetX stock off of an SEC list of naked short sales and delivery failures called Regulation SHO.

“Discovery will certainly reveal that the Defendants circulated and marketed data concerning VirnetX and other highly shorted stocks to clients by distributing lists of top shorted stocks, knowing that they had the ability to offer its artificial supply,” the complaint states.

Alleging violations of federal anti-racketeering law, fraud and conspiracy, among other claims, the class seeks \$9.72 billion in damages – three times the lost value of \$3.24 billion.

They are represented by Philip Guarino in Montclair, N.J.

The investors seek to represent a class of about 5,000 people or entities who owned shares of VirnetX stock at any point between Feb. 1, 2013 and the filing of the complaint.

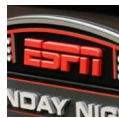
Representatives for Merrill Lynch, Charles Schwab and TD Ameritrade all declined to comment. Goldman Sachs and the other defendants have not returned requests for comment.

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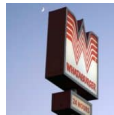
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