

Investor Suit Against Higher One To Proceed Largely Intact

By **Jon Hill**

Law360, New York (September 25, 2017, 8:55 PM EDT) -- A Connecticut federal judge on Monday found that the investors accusing Higher One Holdings Inc. of having misled them about being back on the straight and narrow after a run-in with federal regulators have tightened up their complaint enough for the bulk of their proposed class action against the higher education financial services provider to proceed.

U.S. District Judge Alvin W. Thompson had tossed the investors' complaint **last year** for its failure to allege facts showing any actionable statement or omission, but the investors' subsequently filed amended complaint contained enough additional facts and sharper pleadings for the judge to deny all but a sliver of Higher One's latest bid to dismiss the suit.

Of five categories of statements from Higher One and its former top brass that investors singled out as false or misleading, claims related to only a handful of statements in one category got the ax from Judge Thompson, who took note of the new material that the investors had added to their complaint from confidential witnesses and other sources.

"With the inclusion of three additional CWs, and in particular CW5, the plaintiffs have sufficiently pled falsity with respect to the statement that Higher One had 'substantially revised [its] compliance management system,'" the judge wrote, referring to one category of alleged misstatements.

The suit, which also names Higher One's former top brass as defendants, dates back to May 2014 and alleges the company and its executives made a "litany" of misleading statements about the company's legal compliance, banking relationships, transparency, litigation exposure and financial results.

According to investors, these statements painted a false portrait of a "reformed, growing company that had turned the corner" after having faced class actions and a regulatory crackdown in 2012 over its allegedly deceptive marketing and improper fees.

The New Haven, Connecticut-based company, which provides online financial management tools to schools and students, was ordered to pay \$11 million to college students in August 2012 for violating the Federal Trade Commission Act and \$15 million in several class actions. The company subsequently agreed to internal reforms, according to the complaint.

The board hosted an earnings call on May 8, 2014, during which President and CEO Marc Sheinbaum told analysts and investors that the company had "made tremendous strides" in strengthening its compliance efforts.

Investors have said that the truth began to come out the next day, when Higher One filed its Form 10-Q, which stated that the Federal Reserve had notified the company of FTC Act violations on May 9, 2014. The U.S. Securities and Exchange Commission form said that the issues would likely result in monetary penalties of an uncertain amount but could cause Higher One to default on its credit facility.

The company's stock price subsequently fell from \$6.41 to \$3.71 between May 2014 and August

2014, investors have said.

Counsel for the investors and for Higher One did not immediately return requests for comment late Monday.

The investors are represented by Jeremy A. Lieberman, Matthew L. Tuccillo, Jennifer Banner Sobers and Patrick V. Dahlstrom of Pomerantz LLP as well as Henry Elstein and Bruce L. Elstein of Goldman Gruder & Woods LLC.

Higher One is represented by James H. Bicks and Joseph C. Merschman of Wiggin & Dana LLP.

The case is Perez v. Higher One Holdings Inc. et al., case number 3:14-cv-00755, in the U.S. District Court for the District of Connecticut.

--Additional reporting by Martin O'Sullivan and John Kennedy. Editing by Aaron Pelc.

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