

NJ Broker Slams SEC's 'Wildly Overblown' Short Sale Suit

By [Carla Baranauckas](#) · [Listen to article](#)

Law360 (August 25, 2023, 7:42 PM EDT) -- A New Jersey investment firm is asking a federal judge to toss a large portion of a lawsuit by the [U.S. Securities and Exchange Commission](#) alleging it reaped \$2 million from an illegal short-selling scheme, arguing that the "wildly overblown" claims don't include enough specifics.

Sabby Management LLC and its managing partner, Hal D. Mintz, argued in a motion to dismiss that the SEC had failed to provide sufficient details about the majority of its claims that Mintz materially misled investors, and it separately argued that some of the agency's claims were time-barred.

"We're moving to dismiss various aspects of the complaint because after years of investigation the SEC has been unable to draft a pleading to support their allegations with respect to at least 80% of the issues that they identify," Jay Auslander of [Wilk Auslander LLP](#) told Law360. "And what's more, even when we gave them tolling agreements on the statute of limitations, they're seeking penalties that go back eight months past the limitations period."

The SEC complaint contends that Sabby and Mintz committed fraud on 10 different occasions regarding the stock of 10 public companies, a court filing said, "yet fails — with respect to eight of those issuers (80 percent of them) — to allege that supposed fraud with even a semblance of the particularity that well-established law requires."

The motion to dismiss disputes the SEC's allegations of "naked short selling," asserting that Sabby held convertible securities or warrants that could be converted into common stock.

Short-selling is the legal practice of selling borrowed securities with the goal of later buying the same securities at a lower price, thereby earning a profit before the shares need to be delivered.

The SEC contended that Sabby's short sales were "naked" because, in some instances, the firm didn't actually borrow or own the securities that it had promised to sell. The firm tried to cover its tracks by purchasing the securities after it offered to sell them, the SEC said.

Sabby also argued that some of the transactions targeted by the SEC fell outside the five-year statute of limitations.

"The SEC cannot resuscitate time-barred claims or requests for civil penalties by combining them with other claims that remain within the limitation period," the court filing said.

The SEC complaint, filed in June, alleged that the Sabby and Mintz "were reckless in not knowing" that their transactions "failed to comply with applicable trading rules" that require the short-seller to locate the stock before the short sale.

In some instances, the SEC said, Sabby was unable to locate the securities by the settlement date.

At the time, Carolyn M. Welshhans, associate director of the SEC's Division of Enforcement, vowed to hold accountable those who use "naked shorts or other manipulative practices to cheat the market and investors."

Representatives for the SEC did not immediately respond to requests for comment.

The SEC is represented in-house by Daniel Maher, Edward Reilly, Amy Friedman and Christopher Mathews.

Sabby and Mintz are represented by Jay Auslander, Aari Itzkowitz and Michael Van Riper of Wilk Auslander LLP.

The case is SEC v. Mintz et al., case number [2:23-cv-03201](#), in the [U.S. District Court for the District of New Jersey](#).

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