Supreme Court Hears IPO Antitrust Case

By Anique Gonzalez

On March 27, the United States Supreme Court heard oral arguments for *Credit Suisse Securities v. Billing,* the IPO antitrust case whose outcome will greatly impact the future of Wall Street, investments, and the manner in which companies are offered for sale to the public.

The class-action lawsuit is comprised of a large group of investors who allege that 16 securities firms and institutional investors breached antitrust laws during the technology boom of the 1990s when they falsely inflated prices for shares of more than 900 IPOs. Among other allegations, the investors contend that the banks employed "tie-in" agreements requiring investors to buy shares of little-known IPOs in order to be eligible to purchase popular IPOs.

In addition to tie-ins, the investors claim the banks utilized a practice known as "laddering," which forces individuals to purchase shares at higher prices after their initial public offerings to generate more fervor for stocks, and forced investors to pay "inflated prices" for shares in technology companies, including Amazon.com, Inc., and eBay.com, Inc.

Several of the securities firms and banks have claimed that the process employed for initial public offerings is regulated by the Securities and Exchange Commission and, therefore, does not need to be regulated by antitrust laws, as well.

Stephen Shapiro of Mayer, Brown, Rowe & Maw, LLP, one of the attorneys representing the banks, said that dual regulation would come with a "danger of inconsistencies and conflicts." Moreover, he argued, "This [the SEC] is the toughest cop in Washington. They are perfectly capable of dealing with this." The banks also insist that the regulations delineated by the United States Securities and Exchange Commission afford them immunity from antitrust laws.

It is this issue of immunity that lies at the crux of the investors' lawsuit, which argues that the securities firms should not be immune from antitrust laws but should be forced to abide by them.

In 2005, a federal appeals court ruled in favor of the investors. The banks subsequently appealed the decision and are now hoping that it will be overturned. It is important to keep in mind that the Supreme Court is not making judgments as to whether or not the actions taken by the securities firms were legal; instead, it is considering whether the influence of these firms on the securities market should be regulated by antitrust laws.

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During the proceedings, the attorney representing the investors, Christopher Lovell, a principal of Lovell, Stewart & Halebian, LLP, maintained that the actions taken by the securities firms amounted to an intentional scheme that sought to illegally increase profit and that, as a result, the firms should be punished more severely than they can be by a federal agency. "It was a massive violation that the securities laws were really not set out to address," Lovell explained.

Two of the most influential bystanders of the case are Wall Street and its companion, corporate America. The Chamber of Commerce and others stated in a court filing that this suit and others like it would "increase...the cost of capital for companies offering shares to the public." Even more importantly, they said, such suits will "damage...the competitiveness of the United States' capital markets."

The court's decision will most likely come in June, but what that decision will be is still uncertain. Some observers have argued that the fact that the court was willing to hear the case at all is a sign that it did not completely agree with the decision made by the federal appeals court. Additionally, a brief filed by the solicitor general stated that the appeals court made a mistake when it handed down its verdict.

There is still a chance that the court may find in favor of the investors, and many fear that if the Supreme Court agrees with the appeals court and securities firms become subject to antitrust laws, a wave of antitrust cases may be filed against them. This, they believe, echoing the Chamber of Commerce's concerns, would inhibit the firms' competitiveness.

In addition to Credit Suisse, other firms named in the lawsuit include Bear Stearns Companies, Inc., Citigroup, Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Company, Lehman Brothers Holdings, Inc., and Morgan Stanley.

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