

FRAUD & WHITE COLLAR CRIME

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AN ANALYSIS OF RECENT CORPORATE FRAUD DEVELOPMENTS

By Bambos Tsiattalou, Maria Theodoulou & Richard Cannon

Two former corporate stars have been making headlines again thanks to huge commercial fraud cases that eventually resulted from their sudden demise: the insolvent German payment processor Wirecard, a short-lived DAX 30 index constituent, and U.S. med tech start-up Theranos, which was once valued at nearly \$10 billion. Three individuals face prosecution in Munich over fraud and false accounting in relation to Wirecard while Ramesh “Sunny” Balwani, the former president and COO of Theranos, has recently been convicted of conspiracy to defraud investors and wire fraud by a jury in San Jose, California.

Together, these two prosecutions on different continents offer a salutary tale of our times, exemplifying a common phenomenon that is becoming increasingly prevalent: start-up companies that grow very rapidly to achieve multi-billion-dollar status, only to crash and burn following revelations of deception, misrepresentation and fraud on an industrial scale.

The Wirecard story has shaken Germany to such a degree that Deutsche Boerse has had to toughen up its membership criteria for inclusion on the DAX 40, which superseded the DAX 30 last September. It was only in 2018 that Wirecard became a DAX 30 constituent valued at €24 billion.

But by June 2020, thanks to exhaustive investigations over several years by the Financial Times and the newspaper’s repeated publication of whistleblower allegations, Wirecard was eventually forced to make serious admissions that sealed its fate: around half of its stated revenues and €1.9 billion of company cash linked to third party acquiring business (TPA) held in Asian escrow accounts did not exist. A German criminal investigation began on 22 June 2020; three days later, Wirecard filed for bankruptcy.

Wirecard’s former CEO Markus Braun now faces a range of criminal charges: fraud, misappropriation of company assets, balance sheet falsification and manipulation of the company’s share price. He denies all wrongdoing and will be tried later this year. His two co-accused are Wirecard’s former chief accountant Stephan von Erffa and the director of its Dubai subsidiary Oliver Bellenhaus.

Von Erffa has also been charged with fraud, breach of trust and market manipulation. German police investigations found evidence that he forged documents, which were subsequently shared with KPMG and EY, linked to a €50 million payment that Wirecard had received in 2018. These funds were wired at von Erffa’s request using a private computer to create a backdated email and a fictitious €50 million “escrow request/authorisation form.”

According to the Financial Times, von Erffa has since admitted to forging specific documents during a special audit by KPMG, but with one caveat: the fabricated payment authorisation was an isolated event. That makes him the first senior Wirecard executive to admit criminal behaviour since July 2020 when Bellenhaus turned himself in to the German authorities and is now a chief witness for the prosecution.

For several years, Theranos was a much-heralded health tech company that claimed to have revolutionised blood testing using methods that needed only minute volumes of blood and could be performed rapidly, thanks to small automated devices developed by Theranos. Founded in 2003 by the then 19-year-old Elizabeth Holmes, and assisted by her boyfriend Ramesh “Sunny” Balwani, Theranos really began to take off after Balwani joined the company as COO in 2009.

Theranos raised more than \$700 million in venture capital culminating in a \$10 billion valuation by 2013/14. But in 2015, professor John Ioannidis and The Wall Street Journal questioned the validity of the Theranos technology. The U.S. Securities and Exchange Commission (SEC) and the Centers for Medicare and Medicaid Services (CMS) launched investigations and the company was eventually dissolved in September 2018.

In June 2018, following a two-year investigation by the U.S. Attorney’s Office for the Northern District of California, a federal grand jury indicted Holmes and Balwani on nine counts of wire fraud and two counts of conspiracy to commit wire fraud. The victims comprised both investors and patients. The claims made about Theranos blood tests and the company’s testing devices, which proved to be false were central to these charges.



After giving birth to a son in July 2021, Holmes began her trial the following month. It ended in January 2022. Giving evidence, she accused Balwani of abuse and manipulation. Although she was convicted of four counts of defrauding investors, Holmes was found not guilty of defrauding patients. She is scheduled to be sentenced in October 2022 and faces up to 20 years in federal prison. The New York Times reported that the case "came to symbolise the pitfalls of Silicon Valley's culture of hustle, hype and greed."

Balwani's trial began in March 2022 and in July, he too was convicted of deceiving investors as part of a plot with his by then ex-girlfriend, Holmes. Both of them had falsely and repeatedly claimed that Theranos devices could detect multiple diseases with only a few drops of blood.

It is self-evident that investors should always ask questions, carefully evaluating the track record of a company's management team and the products or services that they sell. Among the many lessons to be learned from the large-scale fraud at Wirecard and Theranos, these would appear to be a good starting point. Put simply: caveat emptor.

Arguably, more serious questions arise for regulators and for the professional advisers involved about how such sustained levels of deception were ever possible. No doubt we will learn more about this in due course. The details may prove invaluable in preventing similar frauds from arising in future.



Bambos Tsiattalou is the Founding Partner and a highly respected and sought after criminal defence lawyer at Stokoe Partnership Solicitors. Prior to his admission on the roll of solicitors, he was a barrister acting in many high profile cases.

Bambos has many years' experience of investigations and prosecutions relating to serious crime, including murder, fraud, drug trafficking, bribery and corruption cases. He specialises in cases involving money laundering, confiscation, civil recovery and extradition matters.

Bambos is highly ranked in leading law directories in recognition of his talent and legal knowledge. He is ranked in Chambers and Partners and is a Leading Individual in The Legal 500 UK Guide for his general crime expertise, and is also highly ranked for his financial crime and fraud practices.



Maria Theodoulou has been a Partner at Stokoe Partnership since 2004, having joined the Practice as a trainee in 1997. She oversees all branches of Stokoe Partnership Solicitors, ensuring that the Firm's high standards and ethos are carried through by each member of the team. She has overseen the rapid expansion of the Practice.

Maria has a solid and strong track record as a criminal defence lawyer with a passion for defending her client's interests. Maria specialises in all types of criminal defence matters, often those attracting media attention. She has considerable expertise in defending serious cases involving allegations of murder, armed robbery and conspiracy to supply large scale Class A drugs.

Maria is ranked as a 'Recommended Lawyer' in The Legal 500 UK 2022 Guide where she is described as "an excellent tactician and adviser to clients, always knows the best strategy."



Richard Cannon is a Partner at Stokoe Partnership Solicitors. He is an extremely experienced white collar crime lawyer, practising primarily in serious fraud and related areas. Richard has particular expertise in cases relating to serious and complex fraud together with matters of alleged bribery and corruption relating to both private and corporate clients. He also has extensive experience in high value and complex money laundering matters across the Proceeds of Crime Act.

Richard has a strong practice in relation to matters relating to cross border financial crime allegations particularly involving the United States assisting clients on a number of fronts including civil proceedings and fighting extradition to the US.

Richard has been consistently ranked by Chambers and Partners for financial crime where has been described as a "fantastic person to have on your side" who is "knowledgeable, thoughtful and efficient". He has also been praised as "a great tactical defence lawyer" and "a very smart and intuitive lawyer". He is also ranked as a Recommended Lawyer in The Legal 500 UK 2022 guide where he is described as having "notable experience in international matters involving the US."



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