

## [Securities Regulation Daily Wrap Up, FRAUD AND MANIPULATION— S.D.N.Y.: Former director, gambler charged with insider trading; pro golfer returns profits, \(May 19, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Amanda Maine, J.D.](#)

The SEC and the Department of Justice announced insider trading charges against two men relating to the 2013 spinoff of a subsidiary of Dean Foods and other confidential information. Professional golfer Phil Mickelson, who had been tipped by one of the defendants, was named as a relief defendant in the SEC's case and agreed to repay the nearly \$1 million he made as a result of the tip ([SEC v. Walters](#), May 19, 2016).

**Scheme.** Thomas C. Davis, a former member of Dean Foods's board of directors, has been friends with professional gambler Billy Walters for more than 20 years. According to the SEC and DOJ, Davis tipped Walters with confidential information about the company, including information about the company's quarterly earnings before they were publicly announced. Walters' trades in Dean Foods stock reaped profits and avoided losses of \$40 million, the SEC and DOJ alleged. Davis, who faced financial difficulties stemming from gambling debts and his misappropriation of funds from a charity, received payments from Walters totaling nearly one million dollars in exchange for his tips.

**WhiteWave spinoff.** In addition to Davis's tips to Walters on Dean Foods's quarterly earnings, the SEC and DOJ alleged that Davis told Walters that the company planned to spin off its organic and plant-based foods subsidiary, WhiteWave Foods. Between May and August 2012, Walters purchased 4 million shares in Dean Foods. The spin-off was announced on August 7, 2012, and the share price increased by 40 percent. Davis continued to provide Walters with inside information on WhiteWave's IPO, and Walters purchased even more Dean Foods stock. The spin-off of WhiteWave was completed in August 2013, and Walters sold all his Dean Foods shares, making a profit of \$110 million.

Walters tipped Mickelson about the WhiteWave spinoff, according to the SEC. Mickelson allegedly had placed bets with Walters and owed him money, so he urged Mickelson to purchase Dean Foods shares. After the spin-off was announced, Mickelson sold all his shares for \$931,000 profit. He repaid Walters in September 2012.

**Darden information.** Davis was approached by group of investors in 2013 that told him in confidence that they planned to buy stock in Darden Restaurants with the goal of pushing the company to make certain corporate changes. Davis even signed a non-disclosure agreement where he promised that he would not cause any person to acquire Darden securities. Nevertheless, Davis again tipped Walters, who purchased \$30 million in Darden stock. When the Wall Street Journal broke the news about the investor group's intentions, Darden stock rose 7 percent, generating unrealized profits of nearly \$1 million for Walters, according to the SEC and DOJ.

**Charges.** The criminal charges against [Davis](#) and [Walters](#) include securities fraud, wire fraud, and conspiracy to commit wire and securities fraud. On May 16, 2016, Davis [pleaded](#) guilty to the charges, as well as charges of obstruction of justice and perjury. He is cooperating with the government in its investigation of Walters, who has been arrested in Las Vegas, according to U.S. Attorney Preet Bharara. Although Walters is a prominent sports bettor, "these things were no gamble at all, they were a sure thing," Bharara said at a press conference announcing the charges.

Davis and Walters also face civil securities fraud [charges](#). Mickelson [agreed](#) to disgorge the profit he made as a result of Davis's tip, plus over \$100,000 in prejudgment interest. "Mickelson made money that wasn't his to make," Enforcement Director Andrew Ceresney [said](#). "This action against Mickelson makes clear we will pursue

both those who engage in insider trading and those who profit from it,” Ceresney warned. Mickelson neither admitted nor denied the SEC’s allegations. Mickelson was not criminally charged.

The case is [No. 16-cv-3722](#).

Attorneys: Alexander Mircea Vasilescu for the SEC. Barry Berke (Kramer Levin) for William T. Walters. Thomas Melsheimer (Fish & Richardson) for Thomas C. Davis. Gregory Craig (Skadden Arps) for Phil Mickelson.

Companies: Dean Foods Company; WhiteWave Foods Company.

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