

Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: Jury finds Wyly brothers liable for secret trading in their own companies, (May 12, 2014)

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By Anne Sherry, J.D.

A jury verdict delivered today in the SEC's case against Sam and Charles Wyly found the brothers liable for fraud and for violating reporting requirements for corporate insiders. The SEC prevailed on all 13 counts of its 2010 complaint describing a 13-year scheme in which the Wyllys traded securities of public companies they had acquired or founded and on whose boards they sat, without disclosing their ownership and trading of the securities (*SEC v. Wyly*, May 12, 2014).

The Wyllys used a system of trusts and subsidiary companies located in the Isle of Man and the Cayman Islands to hide their ownership and control of the securities of Michaels Stores, Inc., Sterling Software, Inc., Sterling Commerce, Inc., and Scottish Annuity & Life Holdings Ltd. The Wyllys used trust agreements that purported to vest complete discretion and control in the offshore trustees, when in fact the Wyllys never relinquished their control over the securities and continued to vote and trade the securities at their sole discretion. Their attorney, Michael C. French, and stockbroker, Louis J. Schaufele III, also named as defendants, profited from their assistance in the fraud. The defendants' Schedule 13D filings, when they were made at all, materially underreported the number of shares they beneficially owned or included other omissions and misrepresentations.

The jury found in favor of the SEC on all 13 counts of the complaint. Andrew Ceresney, Director of the Division of Enforcement, said in a statement: "We are gratified by the jury's verdict We will continue to hold accountable, and bring to trial when necessary, those who commit fraud no matter how complex their scheme or how hard they try to hide it."

The case is No. 10 CV 5760.

Attorneys: David J. Gottesman for the SEC. Martin Robert Pollner (Loeb & Loeb LLP) for Samuel E. Wyly.

Companies: Michaels Stores, Inc.; Sterling Software, Inc.; Sterling Commerce, Inc.; Scottish Annuity & Life Holdings Ltd.

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