

Corporate & Financial Weekly Digest

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Former LLC's Senior Trader Can Pursue Federal Securities Claim

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A former senior employee and member of a limited liability company can pursue his securities fraud claim against the firm and its managing member because his passive investment in the company supported a claim under Section 10(b) of the Securities Exchange Act of 1934.

Christopher Shirley was a member and senior trader of investment company JED Capital, LLC, and developed several of JED's trading systems while receiving a share of the profits he generated. JED's managing member convinced Mr. Shirley to invest \$250,000 in the company by promising him that the funds would be used to expand JED's trading operations. The manager actually funneled funds to his other ventures, according to Mr. Shirley, and Mr. Shirley sued JED and its manager for violating Section 10(b).

The defendants contended that Mr. Shirley was not a passive investor, and thus failed to state a Section 10(b) claim, because he received a portion of JED's profits as compensation and because he was involved in JED's daily operations. The U.S. District Court for the Northern District of Illinois rejected this argument, holding that Mr. Shirley's inability to control how JED deployed its capital showed that he was sufficiently dependent on the entrepreneurial actions of the manager to support his federal claim. (*Shirley v. JED Capital, LLC*, 2010 WL 2721855 (N.D.Ill. July 8, 2010))

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