

Supreme Court Justices Criticize SEC For Tardiness in Filing Complaint

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Lawyers for the Securities and Exchange Commission ("SEC") faced tough criticism from justices of the United States Supreme Court on Tuesday, January 8, 2013, concerning an insider trading case the agency brought against Marc J. Gabelli and Bruce Alpert, formerly of the financial services company, Gabelli Funds LLC. According to the Wall Street Journal's [Law Blog](#), the case centered around allegations that Gabelli and Alpert had allowed a favored investor to engage in a practice called "market timing," which allowed short-term traders to exploit inefficiencies in the pricing of a mutual fund's shares. According to the SEC, the [alleged wrongdoing](#) took place between 1999 and 2002. Notwithstanding the five year statute of limitations imposed on the SEC for bringing a case, the SEC did not file its complaint against Gabelli and Alpert until 2008. Jeffrey Wall, the attorney arguing the case on behalf of the SEC, was taken to task by both liberal and conservative justices for his assertion that the statute of limitations should begin not at the time of the wrongdoing but instead when the SEC was made aware of the misconduct. Justice Scalia stated that the SEC's position was "a brand new assertion by the government," and Justice Breyer added that the SEC's position raised "enormous consequences" given that the extended statute of limitations might extend to other government agencies as well. [David J. Marshall](#), a whistleblower attorney at the D.C. law firm of Katz, Marshall & Banks, thought that the justices critiques made an important point for not just the SEC, but to whistleblowers in general. "This case should serve as a reminder to whistleblowers that they should report securities violations promptly, so as to provide the SEC with ample time to investigate and make the decision to bring an enforcement action," said Marshall.