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Broker Execs Face Music Over Fund Scandal Role

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Top players caught in a late-trading and market-timing case that was engineered through a New York brokerage and deceived many fund shops faced SEC sanctions recently.

The chairman, chief executive officer, chief compliance officer, chief financial officer and a trader of **Trautman Wasserman** were punished for their part in the wrongdoing. The now defunct broker-dealer placed about 9,500 orders from hedge fund customers to trade in eight fund families after 4 p.m., according to a [Jan. 14 SEC decision](#)¹.

The trading took place from February 2001 to September 2003 and involved the **Janus** Mercury Fund, **Invesco** Technology Funds, **Nations** International Equity Fund, **SEI** International Trust, **Credit Suisse** International Focus Fund, **Franklin Funds**, **Alliance** Premium Growth Fund and **The Hartford** Fortis Series Fund, according to the decision.

The case is significant for the amount of "dilution losses" to the mutual funds involved (more than \$100 million) and for the approximately \$20 million in revenue Trautman Wasserman received, says Alexander Vasilescu, regional trial counsel in the SEC New York office.

Just as important is the fact that the SEC went up the food chain at the broker. "We not only held the traders responsible, but those who facilitated or participated in the trading, whether in the compliance department or the principals of the firm," Vasilescu says. "Nobody walked away unscathed."

An SEC chief administrative law judge issued a decision Jan. 14 against former CEO Gregory O. Trautman and former chairman Samuel Wasserman. Wasserman received the less severe punishment, being barred from working as a supervisor with a broker-dealer, while Trautman was barred from associating with any broker-dealer or investment company, Vasilescu says.

Trautman and Wasserman were also ordered to disgorge more than \$9 million, which represents the amount the SEC says the company collected from mutual funds, according to the decision.

From 2001 to 2003, mutual fund revenue accounted for a huge chunk of total revenues at the firm. Lawrence Harris, noted as an expert in market timing, reviewed the company's mutual fund business records between Feb. 14, 2001, and Sept. 10, 2003, and "concluded that late-trading strategies most likely generated most of the trading orders," according to the decision.

Unlike others caught up in the scandal, Trautman and Wasserman did not settle with regulators.

In a [February 14 order](#)², Mark Barbera, chief financial officer; Forde H. Prigot, chief compliance officer; and James A. Wilson Jr., a registered representative, were each sanctioned. They were the latest to settle with the SEC in a case that started to unravel in 2004.

Three **Janus Capital** employees also became entangled in their own market-timing scandal when in 2006 the SEC accused them of permitting improper trading by Trautman Wasserman.

The January decision and February orders highlighted the lengths to which Trautman Wasserman either evaded or ignored warnings from funds to stop market timing. Prigot, who served as CCO from February 2003 to October 2005, actively aided two registered reps, Wilson and Scott Christian (who previously settled with regulators) and their customers in their market-timing scheme.

"Prigot received numerous warning or kick out letters from mutual funds, but failed to stop the market timing as the funds requested," reads the Feb. 14 order against him. "Prigot also signed numerous account opening forms for TWCO [Trautman Wasserman & Co.]. Wilson and Christian then used the multiple accounts to deceive mutual funds about the identity of their customers in order to market-time mutual funds."

Leon Baer Borstein, Trautman's attorney, challenged the judge's decision, saying that his client admitted to trading after 4 p.m., but that it was not a violation of Rule 22c-1, which requires fund trades to be priced by the current net asset value computed after the receipt of trade orders.

He says his client was a victim of a "politically correct" SEC that took aggressive action after former New York attorney general Eliot

Spitzer's crackdown on the industry. In addition to the demise of his brokerage and the loss of his license, Trautman owes more than \$1 million in fines, says Borstein, whose client is challenging the ruling.

Barry S. Zone, Wasserman's attorney, says he considers his client's outcome a victory. Wasserman faces a minimal fine and can work in the industry, Zone says.

"The key is they were charging him with intentional fraud and what they found was my client was negligent at best in his operation of the firm," Zone says. "[The SEC] lost in their own court."

The SEC has taken strong action to restrict market timing and late traders, and most observers say there has been much improvement. But others, such as Niels Holch, president of the **Coalition of Mutual Fund Investors**, say even with stricter rules it is still possible for firms to engage in market timing.

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