

**FOR IMMEDIATE RELEASE :**

## **Occupy the SEC Files Amicus Brief with the U.S. Supreme Court in *Gabelli v. SEC***

*New York, NY – December 13th, 2012*

Occupy the SEC (OSEC) has [submitted an amicus brief](#) to the United States Supreme Court in the case of [Gabelli v. SEC](#). The Court will be making a ruling about when the statute of limitations clock begins for certain fraud actions brought by the government - from the time the fraud was last committed or from the time the fraud was discovered. In the amicus filing, OSEC supports the SEC's position that the limitations clock should start only upon discovery of the fraud.

*Gabelli v. SEC* relates to allegedly fraudulent market-timing activities by Marc Gabelli, a former portfolio manager at Gabelli Funds LLC, and Bruce Alpert, a chief operating officer for the firm. In April 2008, the SEC brought a civil fraud action against Gabelli and Alpert under the Advisers Act. The activities in question occurred between 1999 and 2002. The statute of limitations applicable to the Advisers Act claim, 28 U.S.C. § 2462, bars such claims by the government if they are filed more than five years from when the claim “accrues.”

Centuries-old caselaw holds that in fraud cases, “accrual” begins only when the aggrieved party discovers (or reasonably should have discovered) the transgressor’s fraud. This interpretation, known as the “discovery rule,” has a common-sense policy behind it. A perpetrator of fraud should not be able to avoid liability under a technicality simply because the aggrieved party remained unaware of the fraud for the limitations period (of five years, in the case of Gabelli).

Gabelli and Alpert have appealed the case to the U.S. Supreme Court, after having lost in the Second Circuit in an opinion co-written by Judge Jed Rakoff. Not surprisingly, financial industry lobbyists like Securities Industry and Financial Markets Association (SIFMA) and the American Bankers Association (ABA) have been vocal critics of the Second Circuit’s decision. SIFMA, the ABA and other anti-enforcement groups have filed amicus briefs before the Supreme Court, urging it to overturn the Second Circuit’s Gabelli decision. If the pro-industry lobbyists have their way, an

untold numbers of fraudsters will be able to avoid liability under a technicality – 28 U.S.C. § 2462 – simply because their frauds remain undiscovered for certain statutory periods of time.

The recent financial crisis is testament to the dire need for aggressive enforcement of antifraud laws. Unfortunately, this case could be the death knell for effective enforcement by agencies, which are overburdened, underfunded, and in many cases, beholden to industry. If the Supreme Court finds that the discovery rule does not apply to 28 U.S.C. § 2462, many of the misdeeds that caused the Great Recession of 2008 will go unpunished as the government runs out of time under the five year statute of limitations.

**Occupy the SEC**, a working group within the New York-based Occupy Wall Street movement, seeks to ensure that financial regulators protect the interests of the public, not Wall Street. For further information, visit <http://occupythesecc.org> or email [info@occupythesecc.org](mailto:info@occupythesecc.org)