

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**  
**July 31, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12386**

**In the Matter of**

**WARREN LAMMERT,  
LARS SODERBERG, AND  
LANCE NEWCOMB**

**Respondents.**

**ORDER INSTITUTING  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, SECTIONS 15(b) AND 21C OF  
THE SECURITIES EXCHANGE ACT OF  
1934, SECTIONS 203(f) AND 203(k) OF  
THE INVESTMENT ADVISERS ACT OF  
1940, AND SECTIONS 9(b) AND 9(f) OF  
THE INVESTMENT COMPANY ACT OF  
1940**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(f) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Warren Lammert (“Lammert”), and Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, Sections 203(f) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act against Lance Newcomb (“Newcomb”), and Lars Soderberg (“Soderberg”) (collectively, the “Respondents”).

**II.**

After an investigation, the Division of Enforcement alleges that:

**Introduction**

1. This matter involves improper market timing and frequent trading in certain mutual funds (the “Funds”) managed by Janus Capital Management, LLC (“JCM”). “Market timing” includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market

timing, while not illegal *per se*, can harm other mutual fund shareholders because it can dilute the value of their shares, if the market timer is exploiting pricing inefficiencies, or disrupt the management of the mutual fund's investment portfolio and can cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

### **JCM Prospectuses**

2. The prospectuses for each of the Funds contained statements concerning frequent trading and market timing which are illustrated below.

a. Each of the Funds had at least one prospectus that expressly stated that JCM “does not permit frequent trading or market timing” in the Funds. For example, the Janus Mercury Fund (the “Mercury Fund”) prospectus contained the following disclosure in its Exchanges section:

The exchange privilege is not intended as a vehicle for short-term or excessive trading. The Fund does not permit frequent trading or market timing. Excessive exchanges of Shares disrupt portfolio management and drive Fund expenses higher. A Fund may suspend or terminate your exchange privilege if you engage in an excessive pattern of exchanges.

b. In addition, the prospectuses for the Janus retail funds, which included the Mercury Fund, stated that investors were limited to four exchanges out of a fund per calendar year. For example, the general prospectus for the Janus equity funds, which included the Mercury Fund, contained the following disclosure in its Exchange Policies section:

You may make four exchanges out of each Janus fund (exclusive of Systematic Exchanges) per calendar year. These limits are designed to deter short-term trading.

c. Moreover, the prospectuses for the Funds further disclosed that the funds were “not intended for market timing or excessive trading.” For example, the general prospectus for the Janus equity funds, which included the Mercury Fund, contained the following disclosure in its Excessive Trading Policy section:

Frequent trades in your account or accounts controlled by you can disrupt portfolio investment strategies and increase Fund expenses for all Fund shareholders. The Funds are not intended for market timing or excessive trading. To deter these activities, the Funds or their agents may temporarily or permanently suspend or terminate exchange privileges of any investor who makes more than four exchanges out of a Fund in a calendar year and bar future purchases into the Fund by such investor. In addition, the Funds or their agents also may reject any purchase orders (including exchange

purchases) by any investor or group of investors indefinitely for any reason, including, in particular, purchase orders that they believe are attributable to market timers or are otherwise excessive or potentially disruptive to the Fund

Orders placed by investors in violation of the exchange limits or the excessive trading policies or by investors that the Fund believes are market timers may be revoked or cancelled by a Fund on the next business day after receipt of the order. For transactions placed directly with the Funds, the Funds may consider the trading history of accounts under common ownership or control for the purpose of enforcing these policies. Transactions placed through the same financial intermediary on an omnibus basis may be deemed part of a group for the purpose of this policy and may be rejected in whole or in part by a Fund.

3. One of the reasons the prospectuses for the Funds limited frequent trading and market timing was that frequent trading and market timing can be detrimental to other shareholders. JCM actively monitored trading in the Funds and took steps to enforce the frequent trading and market timing prohibition in the Funds' prospectuses, including barring investors from the Funds.

### **Respondents**

4. Warren Lammert was the portfolio manager for the Janus Mercury Fund from its inception in 1993 until he left JCM in March 2003. Lammert is 44 years old and now lives in Massachusetts.

5. Lars Soderberg was an executive vice president and managing director in sales at JCM from early 2002 until he resigned from JCM in July 2004. Soderberg was a vice president and director in sales at JCM from August 1995 to early 2002. At all relevant times Soderberg was a registered representative associated with Janus Distributors, Inc., a broker-dealer registered with the Commission. Soderberg is 47 years old and a resident of Denver, Colorado.

6. Lance Newcomb was an assistant vice president and regional sales director for JCM from June 1998 until he left JCM on August 1, 2003. At all relevant times Newcomb was a registered representative associated with Janus Distributors, Inc., a broker-dealer registered with the Commission. Newcomb is 38 years old and a resident of Castle Rock, Colorado.

### **Related Entity**

7. Janus Capital Management LLC, a Delaware limited liability company with headquarters in Denver, Colorado, was at all relevant times an investment adviser registered with the Commission.

### **Trautman Wasserman Arrangement**

8. In or about November 2001, Lammert entered into an arrangement with the brokerage firm Trautman Wasserman (“Trautman”). The arrangement allowed Trautman’s customers to trade \$50 million in the Mercury Fund pursuant to a so called “asset allocation model” which involved market timing and frequent trading.

9. In November 2001, Trautman’s customers began trading the Mercury Fund, and Newcomb became the day-to-day sales representative servicing the Trautman account for JCM.

10. In January 2002, JCM’s operations group identified Trautman as an excessive trader and, consistent with JCM’s normal procedures, sent a letter requesting that the firm through which Trautman excessively traded suspend Trautman’s trading privileges. After Trautman contacted Newcomb about the letter, Newcomb advised JCM’s operations group that Lammert had authorized Trautman’s customers to trade in excess of the Mercury Fund’s four exchange annual limit. As a result of Newcomb’s instruction, the operations group stopped monitoring Trautman’s trading activity.

11. On or about March 11, 2002, Soderberg, at Lammert’s request, began communicating with Trautman about other Janus funds in which Trautman’s customers could trade using their asset allocation model. Trautman was particularly interested in funds holding international securities. Soderberg and Newcomb eventually made arrangements for Trautman’s customers to trade several other Funds, including the Janus Advisor International Growth Fund and the Janus Advisor Worldwide Fund. Soderberg and Newcomb never informed the portfolio managers for the other Funds that Trautman’s customers were trading these Funds.

12. During the summer of 2002, Soderberg became concerned about the extent of trading by Trautman’s customers in certain Funds holding international securities and he instructed Newcomb to prohibit Trautman’s customers from trading in those Funds. However, after a telephone conversation with Trautman, Soderberg reversed his decision and permitted Trautman’s customers to continue trading in all but one of the Funds holding international securities. Soderberg established new limits, which still exceeded the four exchange annual limit, for Trautman’s trading in the Funds holding international securities and these new limits were not disclosed in the relevant prospectuses.

13. Shortly after Soderberg’s decision to allow Trautman’s customers to continue trading in the Funds holding international securities, JCM’s operations group notified Newcomb that Trautman’s customers had exceeded Soderberg’s new trading limits. Soderberg was also advised that his limits had been exceeded by Trautman, but did nothing. Newcomb informed the operations group at this time that he would assume responsibility for monitoring the trading activity of Trautman’s customers, but in fact, Newcomb did not monitor the trading by Trautman’s customers from this point forward. Trautman’s customers continued to frequently trade the Funds using its asset allocation model without further intervention by anyone at JCM through the summer of 2003.

14. Trautman's customers maintained substantial assets in Janus funds while they were trading the Funds. In fact, by the summer of 2003, Trautman's customers had as much as \$260 million invested in Janus funds, though they were typically trading no more than \$5 to \$10 million in and out of each of the Funds.

15. Between November 2001 and September 2003 Trautman's customers made approximately 266 purchases in and approximately 269 redemptions (or exchanges) out of the Funds totaling approximately \$2.6 billion. This trading violated the prospectus disclosure set forth in paragraph 2 above.

### **Brean Murray Arrangement**

16. In or about September 2002, Lammert entered into an arrangement with the brokerage firm Brean Murray & Co., Inc. ("Brean") that allowed a customer of Brean to trade the Mercury Fund in excess of the four exchange annual limitation. Lammert approved Brean's customer to trade the Mercury Fund with \$50 million or 1% of the assets in the Mercury Fund, knowing that Brean intended to make as many as three trades per month in the Fund. As a condition of the arrangement, Brean's customer agreed to make a long-term investment of \$25 million (i.e., 50 percent of the size of the trading capacity) in a Janus money market fund. Newcomb required the long-term investment from Brean's customer in exchange for the right to trade the Mercury Fund under the arrangement.

17. Shortly thereafter, Brean's customer made a long-term investment of \$25 million in a Janus money market fund and began to frequently trade the Mercury Fund with \$50 million.

18. By mid-November 2002, Lammert became concerned about the size of some of the trades by Brean's customer relative to his cash position in the Mercury Fund. Lammert was initially inclined to prohibit Brean from further trading in his fund. However, after having a conversation with a Brean broker, Lammert agreed to allow Brean's customer to continue trading the Mercury Fund, but reduced the trading capacity from \$50 million to \$5 million. At the same time, Brean's customer, in turn, reduced its long-term investment in the Janus money-market fund from \$25 million to \$2.5 million.

19. Between October 2002 and June 2003, Brean's customer made approximately 53 purchases in and approximately 54 redemptions (or exchanges) out of the Mercury Fund totaling approximately \$453 million. This trading violated the prospectus disclosure set forth in paragraph 2 above.

### **Failure to Disclose the Arrangements and Role of Respondents in False Prospectus Disclosure**

20. At no time did the Respondents notify the Funds' shareholders or the board of trustees of the Funds that JCM was permitting Trautman's and Brean's customers to market time and frequently trade the Funds while otherwise routinely enforcing the four exchange limitation in these Funds with respect to trading by other customers. Nor did JCM or the Respondents

disclose JCM's potential conflict of interest as a result of the increased assets under management and advisory fees that the arrangements generated for JCM.

21. JCM routinely circulated a redlined version of new or revised prospectuses to portfolio managers and senior salespersons for review and comment. Lammert and Soderberg regularly received copies of prospectuses for this purpose and thereby participated in the drafting of prospectuses that were materially false and misleading because Lammert and Soderberg knew that the arrangement with Trautman and Brean were contrary to the statements in the Funds' prospectuses concerning market timing and frequent trading. Newcomb, as a salesman of the Funds, was obligated to understand the prospectus disclosure for investment products he sold for JCM. He therefore knew or was reckless in not knowing that the arrangements with Trautman and Brean were contrary to the statements in the Funds' prospectuses concerning market timing and frequent trading.

### Violations

22. As a result of the conduct described above, Lammert (i) willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, or, in the alternative, willfully aided and abetted and caused JCM's violations of these provisions, and (ii) willfully aided and abetted and caused JCM's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Lammert allowed two improper trading arrangements whereby Trautman and Brean were permitted to engage in market timing notwithstanding a prohibition on market timing in the Funds' prospectuses, and he failed to disclose the arrangements and JCM's conflict of interest.

23. As a result of the conduct described above, Soderberg (i) willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, or, in the alternative, willfully aided and abetted and caused JCM's violations of these provisions, and (ii) willfully aided and abetted and caused JCM's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Soderberg allowed an improper trading arrangement whereby Trautman was permitted to engage in market timing notwithstanding a prohibition on market timing in the Funds' prospectuses, and he failed to disclose the arrangements and JCM's conflict of interest.

24. As a result of the conduct described above, Newcomb (i) willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, or, in the alternative, willfully aided and abetted and caused JCM's violations of these provisions, and (ii) willfully aided and abetted and caused JCM's violations of Sections 206(1) and 206(2) of the Advisers Act. Specifically, Newcomb allowed two improper trading arrangements whereby Trautman and Brean were permitted to engage in market timing notwithstanding a prohibition on market timing in the Funds' prospectuses, and he failed to disclose the arrangements and JCM's conflict of interest.

25. As a result of the conduct described above, Lammert and Soderberg willfully aided and abetted and caused JCM's violations of Section 34(b) of the Investment Company Act

in that Lammert and Soderberg made an untrue statement of material fact in a registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

26. As a result of the conduct described above, Newcomb, an affiliated person of an affiliated person of the timed Funds, willfully aided and abetted and caused JCM's violations of Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder, in that, while acting as a principal, Newcomb participated in and effected transactions in connection with joint arrangements in which the Funds were participants without filing an application with the Commission and obtaining a Commission order approving the transactions. Specifically, Newcomb allowed Brean to market time the Mercury Fund in exchange for placing longer term assets in a money market fund managed by JCM, through which JCM realized additional advisory fees.

### **III.**

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents Soderberg and Newcomb pursuant to Section 15(b)(6) of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents Lammert, Soderberg and Newcomb pursuant to Section 203(f) of the Advisers Act, including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Respondents Lammert, Soderberg and Newcomb pursuant to Section 9(b) of the Investment Company Act, including, but not limited to, civil penalties pursuant to Section 9(d) of the Investment Company Act;

E. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act Respondents Lammert and Soderberg should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1) and (2) of the Advisers Act, and Section 34(b) of the Investment Company Act; and

F. Whether, pursuant to Section 8A of the Securities Act, Section 21C of the Exchange Act, Section 203(k) of the Advisers Act, and Section 9(f) of the Investment Company Act Respondent Newcomb should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Sections 206(1) and (2) of the Advisers Act, and Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder.

#### IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Nancy M. Morris  
Secretary