

Curriculum Vitae

Robert N. Rapp, B.A., M.B.A., J.D.

Case Western Reserve University School of Law
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ACADEMIC POSITIONS

Case Western Reserve University School of Law, Cleveland, Ohio

Visiting Assistant Professor
Louis C. Greenwood Lecturer in Residence
Distinguished Practitioner in Residence
Adjunct Professor of Law

Courses: Securities Regulation
Advance Securities Regulation
Law, Theory and Practice in Financial Markets
Business Associations
SJD Candidate Research and Writing Seminars
SJD Dissertation Adviser

Cornell Law School, Ithaca, New York

Practitioner-In-Residence (1993). Research and Teaching (“Law, Theory and Practice in Financial Markets”).

PRACTICE EXPERIENCE

Calfee, Halter & Griswold LLP, Cleveland, Ohio (1975 – 2017)

Senior Counsel, Partner, Associate

Metzenbaum, Gaines & Stern, Cleveland, Ohio (1972-1975)

Associate

FINANCIAL SERVICES INDUSTRY

NASD (now FINRA): Legal Advisory Board (Public Member) 1992 - 1996

The Legal Advisory Board advised the NASD Board of Governors on legal and policy issues relating to member firm activities and self-regulation. *Chair:* Mark-up/Mark-down Subcommittee. *Member:* Punitive Damages in Arbitration Subcommittee

The Nasdaq Stock Market LLC: Market Operations Review Committee (Public Member) 1996 - 2006, 2009 - 2014

The former Market Operations Review Committee heard and decided appeals by Nasdaq Market Makers from intra-day staff decisions regarding erroneous transactions, withdrawals from market-making, and related issues.

Securities Industry Essentials (SIE) Examination: Passed August 2023

PUBLISHED WRITINGS: LAW TREATISES

Blue Sky Regulation (2d Ed., Matthew Bender/LexisNexis). A definitive four volume treatise on state securities regulation in the United States (Updated continuously)

Contributing Author, *Federal Securities Act of 1933* (Securities Regulation Series, Matthew Bender LexisNexis) Chapter 2: “Applicability of the Act: ‘Security’ and ‘Sale’”; Chapter 3: “Exempt Securities under Section 3 of the Securities Act”; Chapter 4: “Exempt Transactions under Section 4 of the Securities Act”; Chapter 5: “Small Issue Exemptions under Sections 3(b) and 3(c) of the Securities Act.”

Contributing Author, *Federal Securities Exchange Act of 1934* (Matthew Bender/LexisNexis) Chapter 2A: “Registration and Regulation of Clearing Agencies and Transfer Agents”; Chapter 5C: “Broker-Dealer Liabilities under the Securities Exchange Act of 1934.”

Contributing Author, *White New York Business Entities* (14th ed., LexisNexis), Chapter 10 --“State Securities Regulation: The Martin Act” (LexisNexis 2009).

PUBLISHED WRITINGS: LAW JOURNALS

“Investment Bankers as Underwriters –Barbarians or Gatekeepers? A Response to Brent Horton on Direct Listings” (with Anat Beck and John Livingstone) 73 *SMU L. Rev. F.* 251(Dec. 2020).

“Plausible Cause: Exploring the Limits of Loss Causation in Pleading and Proving Market Fraud Claims Under Securities Exchange Act §10(b) and SEC Rule 10b-5 “(Lead Article), 41 *Ohio Northern Univ. L. Rev.* 389 (2015).

“Misapplication of the Federal Extraterritoriality Principle in Limiting the Scope of Civil Remedies for Fraud under State Blue Sky Laws,” 63 *Sec. Reg. L. J.* 288 (Winter 2011).

“The Manifest Disregard Standard for *Vacatur*: Is *Hall Street* One Way?” *The Mayhew-Hite Report on Dispute Resolution and the Courts* (Ohio State University Journal on Dispute Resolution, Nov. 2010)

“Proportionate Liability of Controlling Persons? The Problematic Integration of the Private Securities Litigation Reform Act and Securities Exchange Act §20(a),” 37 *Securities Regulation Law Journal* 93 (Summer 2009)

“Testing the Limits of NSMIA Preemption: State Authority to Determine the Validity of Covered Securities and to Regulate Disclosure” (with Fritz E. Berckmueller), 63 *Business Lawyer* 809 (May 2008).

“Business Lawyers and the New Ohio Rules of Conduct” (with Fritz E. Berckmueller), *Ohio Lawyer* 13 (July/August 2007).

“Sarbanes-Oxley and SEC Standards of Professional Conduct,” 57 *Case Western Reserve Law Review* 365 (Winter 2007) (From “Lawyers in the Crosshairs,” 2006 Leet Symposium presentation, Case Western Reserve University School of Law, October 2006).

“Rethinking Risky Investments for that Little Old Lady: A Realistic Role for Modern Portfolio Theory in Assessing the Suitability Obligations of Stockbrokers,” 24 *Ohio Northern Univ. L. Rev.* 189 (1998), republished in 1999 *Securities Law Review* (D. Langevoort, ed., West Group 1999).

“Corporate Governance and Constituencies” (with Michael T. Bond and Brian Hershizer), 12 *Midwest L. Rev.* 94 (Spring 1994).

“The Proper Role of Securities Act Section 12(2) as an Aftermarket Remedy for Disclosure Violations,” 47 *The Business Lawyer* (February 1992) (U.S Supreme Court Cited: *Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995)).

“Rule 10b-5 and Fraud on the Market-- Heavy Seas Meet Tranquil Shores,” 39 *Wash. and Lee L. Rev.* 861 (1982), republished in 15 *Securities Law Review* 285 (E. Folk, ed. 1983).

“Federal Securities Law Should Protect Some Purchasers of All or Substantially All of a Corporation’s Stock,” 32 *Case Wes. Res. L. Rev.* 595 (1982).

“The Role of Promotional Characteristics in Determining the Existence of a Security,” 9 *Securities Regulation Law Journal* 26 (Spring 1981).

“The Interface between Securities Act §3(a)(10) and Ohio Revised Code §1707.04: Utilitarian Considerations for Ohio Mergers and Corporate Reorganization Transactions,” 27 *Cleveland State L. Rev.* 1 (1978).

“*Fridrich v. Bradford* and the Scope of Insider Trading Liability under SEC Rule 10b-5,” 38 *Ohio State L. J.* 67 (1977).

“Expanded Liability under Section 12 of the Securities Act: When Is a Seller not a Seller?” 27 *Case Wes. Res. L. Rev.* 445 (1977) (U.S. Supreme Court Cited: *Pinter v. Dahl*, 486 U.S. 622 (1988)).

“An Implied Private Right of Action under Section 16(a) of the Securities Exchange Act of 1934,” *Case Wes. Res. L. Rev.* 155 (1971), republished in 4 *Securities Law Review* 159 (E. Folk, ed. 1972).

PUBLISHED WRITINGS: MISCELLANEOUS

“Blue Sky Regulation: A Primer for Accredited Investors,” *Financial Poise (AI Markets)* (Aug. 9, 2023).

“Securities Laws and Small Business Capital Formation: What Has the SEC Done for You Lately?” *Ohio Sec. Bull.* 2021:1 (May 2021).

“The More Things Change.... SEC ‘Regulation Best Interest:’ What Does It Really Mean for Retail Investors?” *Ohio Sec. Bull.* (October 2019).

“The Dodd-Frank Act, Security-Based Swaps And.... ‘Fantasy Sports for Stocks?’” *Ohio Sec. Bull.* (Spring 2017)

“Revisiting Private Trading Platforms for Restricted Securities and Paths to Liquidity,” *Accredited Investor Markets (AIMkts)* (June 2016)

“Regulation A+ Limited Public Offerings under Securities Act §3(b)(2),” *Lexis Practice Advisor Journal* (Winter 2015/16)

“A New Private Trading Platform for Restricted Securities Liquidity for Accredited Investors at What Price?” *Accredited Investor Markets (AI Markets)* (May 8, 2013).

“Curbing Stock Market Volatility,” 4 *Financial Fraud Law Report* 722 (Thompson Media Group LLC, September 2012)

“Securities Regulators Will Aggressively Address “Senior Specific” Marketing of Financial Services and Investment Products,” *Cleveland Bar Journal* (December 2009).

“Conflict Preemption of State Law in the Operation of National Market Mechanisms” (with Matthew Kucharson), *Insights -The Corporate and Securities Law Advisor* (Wolters Kluwer Law & Business, August 2009).

“On the Road to IFRS in the United States,” (with Eric Zell), 28 *Banking and Financial Services Policy Report* No. 2, 1 (Feb... 2009).

“Managing Expectations for U.S. Adoption of IFRS,” (with Scott C. Matasar) *Securities Law* 360 (Oct. 24, 2008).

“Risk Modeling Implications for Potential Rating Agency Liability to Purchasers of Subprime Mortgage-Backed Securities,” (with Scott C. Matasar), *LexisNexis Expert Commentary LexisNexis Total Solutions* Sept. 2008).

“International Securities Regulators Endorse Historic Cooperation Pact to Battle Global Money Laundering and Market Misconduct,” 2002:3 *Ohio Sec. Bull.* 1 (Fall 2002).

“Community Bank Securities Activities after GLBA” (with Barry Daley), 14 *Regulatory Report* 12 (America’s Community Bankers, Jan. 2001).

ONLINE PUBLICATIONS: LEXIS PRACTICE ADVISER

“Bank Securities Offerings Exempt under Securities Act Section 3(a)(2)” (2016 on going)

“Sale of Equity Securities in a Private Placement (Florida) (2019 ongoing)

“Securities Offering Qualification Requirements (New York)” (2019 ongoing)

“Sale of Equity Securities in a Private Placement (New York) (2019 ongoing)

“Secondary Market Trading of Private Company Shares” (2019 ongoing)

Lexis Practice Adviser - Securities, Blue Sky Law topics (ongoing):

The Application of Blue Sky Laws to Offerings after NSMIA

Limited Offering” Alternatives under Blue Sky Laws
Securities and Transaction Exemptions under Blue Sky Laws
State Intermediary Licensing Requirements for Participation in Offerings
Preparation and Use of the Blue Sky Memorandum

LEXIS/NEXUS ONLINE EXPERT COMMENTARIES

“Rapp on *Blue Flame Energy Corp. v. Ohio Dept. of Commerce* [State court rejection of NSMIA covered security status]

“Robert N. Rapp on *Scienter* as a Necessary Element for Civil Aiding and Abetting under State Blue Sky Laws” [*Sterling Trust v. Adderly*]

“Robert N. Rapp on the Definition of “Willfully” Used for the Imposition of Civil Penalties under State Blue Sky Laws” [*Cox v. Garvin*]

“Robert N. Rapp on “Good Faith Belief” in an Exemption as a Defense against Criminal Culpability under Blue Sky Laws for the Unlawful Sale of Unregistered Securities”[*People v. Salas*]

“Robert N. Rapp on State Court Determination of NSMIA ‘Covered Security’ Status” [*Buist v. Time Domain Corp.*]

SPONSORED PUBLICATIONS - CALFEE, HALTER & GRISWOLD LLP

“Swinging with Mutual Funds” (SEC adopted rules for mutual fund swing pricing)
Calfee FirstAlert (Oct. 25, 2016)

“SEC Approves ‘Capital Acquisition Broker’ Status for Advisers on Merges and Acquisitions, Certain Private Placements, and Consulting on Strategic and Financial Alternatives,” *Calfee FirstAlert* (Aug. 24, 2016)

“SEC Calls for Adoption of Robust Business Continuity and Transition Plans by Investment Advisers” *Calfee FirstAlert* (with S. Day, June 30, 2016)

“Financial Crimes Enforcement Network Proposal Would Mandate Investment Adviser Anti-Money Laundering Programs,” *Calfee First Alert* (with G. Monroe, Aug. 26, 2015)

“Challenges to SEC In-House Courts Intensify as Federal Appellate Courts are Poised to Determine Constitutional Validity” *Calfee First Alert* (with V. Davidson Aug. 13, 2015)

“SEC and Department of Labor Call Renew for Imposition of Securities Broker ‘Fiduciary’ Duty,” *Calfee First Alert* (Mar. 20, 2015)

“Will SEC Finally Nix IFRS and the United States?” *Calfee First Alert* (May 18, 2015)

“A Step Too Far: U.S. Appeals Court Throttles Back “Tippee” Insider Trading Prosecutions,” *Calfee First Alert* (Dec. 16, 2014)

“As SEC Rule Languish, States Step up the Initiative on Equity Crowdfunding,” *Calfee First Alert* (Nov. 4, 2014)

“Investment Intermediaries and the Continuing "Uniform Fiduciary Duty" Debate: Is Change Warranted?” *Calfee First Alert* (Oct. 6, 2014)

“SEC Regulation FD Enforcement Action for Selective Disclosure of Company Information by Former V.P. for Investor Relations Sends an Important Message,” *Calfee FirstAlert* (Sept. 12, 2013).

“New Federal Legislation Would Scale Federal Securities Regulation of Mergers and Acquisitions Intermediaries in Smaller Private Company Transactions,” *Calfee FirstAlert* (June 25, 2013), republished in the *VCExperts' Encyclopedia of Private Equity and Venture Capital*. (October 2013)

“U.S. Supreme Court Tightens Requirement for Proof of Class-Wide Damages as a Condition to Class Action Certification,” *Calfee FirstAlert* (April 1, 2013).

“FINRA May Not Block Class Action Waivers in Broker-Customer Agreements,” 18 *Westlaw Journal: Securities Litigation & Regulation*, Issue 23, at 3 (Mar. 19, 2013), republished *Westlaw Journal: Derivatives*

“Ohio Securities Regulator Speaks Out on Unlicensed Compensated Finders in Private Offerings,” *Calfee FirstAlert* (May 9, 2013).

“BATS Exchange Glitch Highlights Complexity Concerns for U.S. Equity Markets Structure,” *Calfee First Alert* (Jan. 23, 2013)

“Opening the Door to SEC Reform of Money Market Funds,” *Calfee First Alert* (Dec. 10, 2012)

“Federal Court to Rule on Challenge to Use of Former Officer’s Interview Statements in Corporate Investigation,” *Calfee First Alert* (Nov. 2, 2012).

“SEC Staff Drops Support for Near Term Adoption of International Financial Reporting Standards (IFRS”), *Calfee First Alert* (July 25, 2012) (with Eric Zell).

“NYSE Program Approved to Permit Sub-Penny Stock Prices to Benefit Retail Investors,” *Calfee First Alert* (July 17, 2012).

“New Rules Heighten Stockbroker “Suitability” Obligation,” *Calfee First Alert* (July 9, 2012).

“The Jumpstart Our Business Startups (JOBS) Act” Broadly Impacts Capital Formation and Private Company Status, *Calfee First Alert* (March 30, 2012).

UNPUBLISHED WORKS/PAPERS

“Law, Theory and Practice in the Financial Markets” (Compilation), Course Materials, Vols. One and Two (Course materials, ongoing)

“A ‘New’ Fiduciary Duty for Stockbrokers? Keeping the Dodd-Frank Rule Debate in Perspective” (2010). Available at: <http://works.bepress.com/robert-rapp/3/>

APPEARANCES/PRESENTATIONS

Case Western Reserve University School of Law, Continuing Legal Education Webinar: “Securities Laws and Small Business Capital Formation: What Has the SEC Done for You Lately?” (Feb. 22, 2021).

Louis C. Greenwood Lecture Series (CWRU Law School), “*Digital Assets and Blockchain Technology: Assessing the Magnitude of Disruption in Securities and Capital Market Regulation*,” (Cleveland City Club, Nov. 7, 2018).

Clearstead Advisers Roundtable: *The Cost of Conscience: Charting ESG Roadmaps for Institutional Portfolios, – ESG Investing and Fiduciary Duty*” (Cleveland, Ohio, Feb. 26, 2019).

Financial Poise/West LegalEd Center Webinars: “*Securities Law: An Overview*” (Feb. 20, 2019); “*Public Company Reporting*” (May 23, 2017; Apr. 24, 2019); “*Private Offering Exemptions and Private Placements*” (May 2, 2017; Mar. 27, 2019); “*Impact of the JOBS Act on Corporate Finance for Small Issuers*” (May 24, 2018); “*Impact of the JOBS Act on the IPO Market*” (June 28, 2018); “*Impact of the JOBS Act on Private Offerings*” (Apr. 26, 2018).

KPMG Audit Committee Institute, Calibrating Strategy and Risk: Boardroom Perspectives on the New Global Volatility, Cleveland, Ohio, Nov. 2, 2015.

Faculty, “Regulation D Offerings and Private Placements,” *31st Annual Advanced ALI Course of Study*, March 14-16, 2013, Scottsdale, Arizona (Blue Sky Practice, Federal and State Enforcement and Civil Liability Issues)

R.R. Donnelley, “SEC Hot Topics Institute” Securities Offerings and JOBS Act Implications (Cleveland, Ohio, Dec. 6, 2012)

Faculty, “Regulation D Offerings and Private Placements,” *30th Annual Advanced ALI-ABA Course of Study*, March 15-17, 2012, Scottsdale, Arizona (Blue Sky Practice, Federal and State Enforcement and Civil Liability Issues, Ethical and Legal Responsibilities of Counsel, Due Diligence, and Regulation D in Practice).

Faculty, “Regulation D Offerings and Private Placements,” *29th Annual Advanced ALI-ABA Course of Study*, March 17-19, 2011, Coronado, California (Blue Sky Practice, Federal and State Enforcement and Civil Liability Issues, Ethical and Legal Responsibilities of Counsel, Due Diligence, and Regulation D in Practice).

“Navigating the Due Diligence Minefield,” *ALI-ABA Webinar*, June 15, 2010 (Due diligence efforts for SEC Regulation D Rule 506 offerings in the wake of market turmoil, the Dodd-Frank Act, and heightened enforcement action by the SEC and FINRA dealing with abuses in the private offering market).

KPMG Audit Committee Institute, Assessing the Implications of the Dodd-Frank Act for Audit Committees, Cleveland, Ohio, December 10, 2010.

“Effective and Economical Approaches to Securities Arbitration,” Cleveland Metropolitan Bar Association (Preparing Yourself and Your Client for Mediation and Arbitration), Cleveland, Ohio, November 9, 2010.

CONFRENCES AND SYMPOSIA

“Equity Holdings in the Three Index Funds: Anti-Competitive Effects, Fiduciary Duties, and Environmental, Social, and Governance Issues,” Moderator: Potential Anti-Competitive Effects and Effects on Market Dynamics and Efficiency, George A. Leet Symposium, Case Western Reserve University School of Law (Nov. 6, 2020).

“Lawyers in the Crosshairs: The New Legal and Ethical Duties of Corporate Attorneys,” Commentator, George A Leet Symposium, Case Western Reserve University School of Law (2006).

BAR ADMISSIONS

Supreme Court of Ohio
United States Supreme Court
United States Court of Appeals for the Sixth Circuit
United States District Court for the Northern District of Ohio
United States District Court for the Southern District of Ohio
United States District Court for the Western District of Pennsylvania

EDUCATION

Case Western Reserve University

Juris Doctor, 1972, Case Western Reserve University

Articles Editor, *Case Western Reserve Law Review*
National Moot Court Team
Dunmore Writing Prize

Society of Benchers (2018 Inductee)

“For outstanding contribution to the profession of law, and to the welfare of the School of Law of Case Western Reserve University, effective leadership in promoting the betterment of society and devotion to the highest standards and traditions of the law.”

Bachelor of Arts, 1969, Case Western Reserve University

Cleveland State University

Master of Business Administration, 1989

PROFESSIONAL ACTIVITIES

American Bar Association

Ohio State Bar Association

Cleveland Metropolitan Bar Association

Chair, Young Lawyers Section (1976 - 1977)

Section of Securities Law
Associate Member, Certified Grievance Committee (Trial Counsel in various
Disciplinary proceedings)

COMMUNITY

Cleveland State University Ahuja College of Business

Established and Funded: The John Baker Endowed Scholarship

Recovery Resources, Cleveland, Ohio

Board of Directors 2000 - 2009, 2012 -2018
Chair, Development Committee (2005 - 2009)

Recovery Resources is a premier provider of alcohol, drug and other addiction services in Northeast Ohio.

MISCELLANEOUS

Marquis "Who's Who in America" (Various years)
Marquis "Who's Who in American Law" (Various years)
Ohio Super Lawyer: Securities Litigation (Various years)
Martindale-Hubbell AV Preeminent (Various years)