

Corporate Articles

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The Risk of Relying Upon the SEC's M&A Brokers Exemption

by Nelson S. Ebaugh

In 2014, the Securities and Exchange Commission (SEC) ushered in a new era for finders when it issued its M&A Brokers no-action letter. In the no-action letter, the SEC stated that it would not prosecute unregistered M&A Brokers that “effect securities transactions in connection with the transfer of ownership of a privately-held company,” as long as they complied with the terms and conditions of the no-action letter. Although the no-action letter provided some assurance to unregistered M&A Brokers, it has not been a panacea. So far, only a handful of states have created a parallel exemption that is similar to the SEC’s M&A Brokers exemption. In addition, the no-action letter may not shield unregistered M&A Brokers from private civil liability. Unregistered M&A Brokers and their clients that rely on the no-action letter must understand the accompanying risks. Otherwise, they may mistakenly believe that the no-action letter provides more protection than it actually does.

According to the no-action letter,

an M&A Broker “is a person engaged in the business of effecting securities transactions solely in connection with the transfer of ownership and control of a privately-held company ... through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the company, to a buyer that will actively operate the company or the business conducted with the assets of the company.”¹ An M&A Broker is exempt from registering as a broker-dealer under Section 15(a) of the Securities Exchange Act of 1934 as long as he limits his participation in the sale as provided in the no-action letter. The M&A Brokers exemption is a relatively narrow one because it only applies where an M&A Broker facilitates the transfer of ownership of a privately-held company. In any event, the no-action letter does allow an M&A Broker to receive transaction-based compensation. This was a major development because the SEC historically interpreted the securities laws to generally

Message from the Chair

by Rachel V. Rose, JD, MBA

It has been said that for every door that closes, a window opens. For me, it has been an honor to serve over the past four years in a leadership capacity for the Corporate and Association Counsel Division (CACD), first as the vice-chair of publications and then, for two years, as your Chair. Hence, the door that is closing has dual meanings: (1) what the closing of the door means for me; and (2) what the closing of the door means for the CACD. Personally, it is a bitter-sweet time because of the relationships that I have forged within the CACD, as well as externally with the Federal Bar Association. Yet, the window that is opening is for me to serve as a member of the Executive Board of the Qui Tam Section, as well as continuing my appointment to the Government Relations Committee. Another portion of that opening is to explore opportunities professionally and embark on new experiences. Leadership is a commitment and a privilege. Indeed, I have been privileged to have the torch passed onto me by John Okray and, in turn, pass the torch onto Diana Lai, the Incoming Chair. For the CACD, the window that is opening includes bringing in new ideas and perspectives with the new leadership team, who will be formally announced in an email once everyone has been certified.

I want to share with you the CACD’s Leadership for next year. Please join me in congratulating and extending a

In This Issue

- pg 2** Division Leadership
- pg 3** Brace Yourself—Increased FCA and CMP Penalties Are Here
- pg 4** Interview with Jonathan Marcus—General Counsel of the U.S. Commodity Futures Trading Commission
- pg 6** Priceless—An Interview with Robert Wittman, Founder of the FBI’s Art Crime Division
- pg 8** Membership Application

CHAIR continued on page 3 →

prohibit unregistered finders from receiving transaction-based compensation.

The concept of an M&A Broker, however, does not exist under the law of most states. In fact, several states prohibit anyone from acting as an M&A Broker, as defined by the SEC, unless they first register as a broker with the state securities regulator. In those states, an M&A Broker that is not registered with the state as a broker risks the possibility of: (1) an administrative enforcement action, (2) criminally prosecution, and/or (3) a lawsuit to declare the M&A Broker's fee contract unenforceable. In addition, any sale involving an M&A Broker that is not licensed with the state's securities regulator may be voidable under the state's blue sky law.²

Fortunately, at least five states have adopted exemptions that are, for the most part, parallel to the SEC's M&A Brokers exemption. Those states are California, Colorado, South Dakota, Texas, and Utah.³ Consequently, it is advisable for M&A Brokers that rely upon the M&A Brokers no-action letter to limit their business to those states.

Even if an M&A Broker limits business to states with similar exemptions, he or she still may expose himself or herself to private civil liability under federal law. The M&A Brokers no-action letter only protects an M&A Broker from being prosecuted by the SEC as an unregistered broker. In private civil litigation, courts generally consider an SEC no-action letter to be nothing more than persuasive authority, i.e., not binding precedent.⁴ In fact, some "courts have explicitly rejected no-action letter authority in favor of

their own interpretation of the regulatory ambiguity at issue in the litigation."⁵ Consequently, in spite of the SEC's M&A Brokers no-action letter, an M&A Broker could have his fee contract declared void under federal law in a private civil action.⁶

In sum, an M&A Broker's reliance upon the SEC's no-action letter, even if his or her activities are limited to states that have similar exemptions, could expose him or her to liability in a private civil action. While the M&A Brokers no-action letter is a step in the right direction, a federal law adopting the M&A Brokers exemption and a parallel exemption in each state are necessary to make the M&A Brokers exemption safe and practical. ■

Endnotes

¹M&A Brokers, SEC No-Action Letter (Jan. 31, 2014, revised February 4, 2014).

²Alexander R. Tiktin, Note, *BROKER-DEALER LAW REFORM Financial Intermediaries in a State of Limbo*, 81 BROOK. L. REV. 1205, 1224 (2016).

³JOSEPH C. LONG, 12A BLUE SKY LAW § 8:34.10 (June 2016 Update).

⁴*Allaire Corp. v. Okumus*, 433 F.3d 248, 254 (2d Cir. 2006).

⁵Donna M. Nagy, *Judicial Reliance on Regulatory Interpretations in SEC No-Action Letters: Current Problems and a Proposed Framework*, 83 CORNELL L. REV. 921, 985 (May 1998).

⁶NORMAN S. POSER, *BROKER-DEALER LAW AND REGULATION* § 5.02[D] (2015 Supplement).

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Brace Yourself—Increased FCA and CMP Penalties Are Here

by Rachel V. Rose, JD, MBA

Aug. 1 is a date that needs to be circled on everyone's calendar. It is the date that the DOJ's interim final rule, which substantially increases both Civil Monetary Penalties (CMPs) and False Claims Act (FCA) penalties, becomes effective.

Recently, I was in Nashville dining with friends, when one of them introduced the concept of the "meat sweats" to the others. We were all perplexed. Upon further research, we discovered that the "meat sweats" do in fact exist and it is a phenomenon whereby an individual consumes an obscene amount of meat, which induces profuse sweating.

What do the "meat sweats" and the increase in penalties have in common? If you could envision the graphic, "[b]race yourself, the meat sweats are coming" the correlation becomes readily apparent. Effective Aug. 1, the per-claim penalties under the False Claims Act (FCA) changed from \$5,500-\$11,000 to a new range of \$10,781-\$21,563 and \$11,000 to \$21,563 for Anti-kickback Statute violations.¹ Now, the range per violation is \$10,781 to \$21,563 plus treble damages for violations occurring after Nov. 2, 2015.² The increase in penalties, which begins with the "catch up adjustment" as set forth in the June 30 Federal Register, should induce profuse sweating. The interim final rule was promulgated per the Bipartisan Budget Act of 2015.³ Specifically, Section 701(a)—"Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015" (the "Improvements Act")—provides authority for the heads of various agencies to increase penalties to keep pace with the rate of inflation.⁴

Counsel should make sure that there are robust compliance

programs in place and that the organization's risk and financial reserves have been assessed utilizing an enterprise risk management approach. With greater incentives for both the government and whistleblowers, it is prudent advice to have one's business and compliance in order. ■



Rachel V. Rose, JD, MBA, is the chair of the Corporate and Association Counsel Division, member of the FBA's Government Relations Committee and member of the Executive Board for the FBA's Qui Tam Section. Rose's practice focuses on advising clients on healthcare, cybersecurity and securities law in relation to transactional items, compliance and a variety of qui tam filings. She is the co-author of the books, What Are International HIPAA Considerations and The ABCs of ACOs. She can be reached at rvrose@rvrose.com. Rose recently authored a similar article for Physicians Practice (www.physicianspractice.com/blog/physicians-changes-doj-penalties-are-coming).

Endnotes

¹81 Fed. Reg. 42491 (Jun. 30, 2016).

²81 Fed. Reg. 42491, 42500, 42501 (Jun. 30, 2016).

³Bipartisan Budget Act of 2015, Pub. L. 114-67, 129 Stat. 599 (Nov. 2, 2015).

⁴Pub. L. 114-67, Section 701, *et seq.* (Nov. 2, 2015).

CHAIR continued on page 1

warm welcome to the newest leadership team members:

Diana Lai—Chair
 William Whitman—Incoming Chair
 Brian Heit—Treasurer
 David Greene—Vice-chair of Programs
 Crystal Ellis—Vice-chair of Publications
 Ryan Temme—Chapter Liaison
 Michael Cahalane—Vice-chair of Membership
 Fernando Ortiz—Secretary
 Rachel V. Rose—Immediate Past Chair

We strive to provide content that assists both internal and external

counsel, who serve in a variety of roles. This edition includes articles by Nelson Ebaugh (Houston, Texas) on how FINRA and the SEC view "finders"; an interview with Jonathan Marcus, General Counsel of the Commodities Futures Trading Commission; Lauren Lucht Abney's interview with Bob Wittman, founder of the FBI's Art Crime Division; and an article that focuses on the increased False Claims Act and Civil Monetary Penalties. Hence, there should be something for everyone.

In closing, I wanted to thank each member of the leadership team, as well as you, our membership, for your continued support. Indeed, it has been a privilege to serve the CACD and I hope that some of you will heed the calling to serve in a similar way. Keep looking for the next open window and I hope to see some of you at the Annual Meeting in Cleveland. ■

Interview with Jonathan Marcus—General Counsel of the U.S. Commodity Futures Trading Commission

Interview conducted by John Okray and Rachel Rose

Jonathan Marcus became General Counsel of the U.S. Commodity Futures Trading Commission in 2013, after serving as the Commission's Deputy General Counsel for Litigation. Before joining the CFTC, Mr. Marcus was Counsel at Covington & Burling LLP, where he was a member of the Supreme Court and Appellate Litigation Practice. Prior to that, Mr. Marcus served at the U.S. Department of Justice as an Assistant to the Solicitor General, arguing five cases for the United States in the Supreme Court. He also served in the Appellate Section of the Department's Criminal Division, where he briefed and argued numerous cases in the federal courts of appeals. Mr. Marcus began his legal career as a law clerk for Judge José A. Cabranes of the United States Court of Appeals for the Second Circuit. Mr. Marcus graduated magna cum laude from Yale University in 1990 and obtained his J.D. from Yale Law School in 1994.



Please share with us your background and how your career evolved into your current role.

I came to the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) with a background in appellate litigation. After graduating from Yale Law School in 1994, I clerked for Judge Jose Cabranes on the United States Court of Appeals for the Second Circuit. The following year, I began practicing law at Williams & Connolly LLP in Washington, D.C. After obtaining great litigation experience there, my interest in criminal law and appellate work led me in 1998 to accept a position in the Appellate Section of the Criminal Division of the U.S. Department of Justice. In that role, I briefed and argued numerous criminal cases in the Federal Courts of Appeals. My appellate docket expanded in 2004 to include civil cases when I joined the Office of the Solicitor General as an Assistant to the Solicitor General, arguing and winning five cases in the Supreme Court. I returned to private practice in 2007 and continued to specialize in appellate litigation at Covington & Burling LLP. The CFTC entered the picture in 2011, when I learned about an opening in the Office of General Counsel (OGC) for the Deputy for Litigation. CFTC’s OGC was looking for a litigation deputy with strong appellate experience, both because that office serves as the appellate shop for the Division of Enforcement and because the agency was anticipating that it would face legal challenges to the major swaps rules being adopted to implement the new Dodd-Frank Wall Street Reform and Consumer Protection Act. After accepting the deputy position in June 2011, I served for nearly two years and handled a wide array of litigation matters, including leading the agency’s defense against challenges to our Dodd-Frank swaps rules. In April 2013, the Commission appointed

me General Counsel. In my current role, I advise the Commission on a wide range of matters, including rulemakings, interpretations and orders, litigation and enforcement issues, pending legislation, and laws of general applicability such as appropriations, labor and employment, and ethics.

What type of persons and activities fall under the jurisdiction of the Commodity Futures Trading Commission (CFTC)?

The CFTC has jurisdiction over derivatives transactions—futures, swaps, and commodity options. We also have jurisdiction over retail trading in foreign currencies. As for persons, the CFTC regulates intermediaries, such as futures brokers (known as futures commission merchants), swap dealers, commodity trading advisers, and operators of commodity trading funds (known as commodity pools). We also regulate trading platforms for swaps (swap execution facilities (SEFs)) and futures (designated contract markets (DCMs)), as well as clearing houses (derivatives clearing organizations (DCOs)).

Would you explain the difference between over-the-counter and exchange-traded swaps?

Over-the-counter swaps are executed bilaterally between counterparties. Before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, swaps were executed bilaterally. Under Dodd-Frank, many swaps are now exchange-traded on CFTC regulated trading platforms, namely SEFs or DCMs. CFTC rules require that certain swaps be cleared through a clearing house. The so-called clearing mandate today applies to many interest rate and credit default swaps. The CFTC has proposed expanding the types of interest rate swaps that must be cleared. Swaps that are required to be cleared and are made available to trade on a SEF or DCM must be executed on such a platform. Additionally, with only limited exceptions, swaps are generally required to be margined. Margins for cleared swaps are set by clearing houses under standards prescribed in CFTC rules. CFTC rules for margin for uncleared swaps begin to take effect in September 2016 and will be phased in over the next few years. Finally, all swaps, regardless of where they are executed or whether they are cleared, must be reported to swap data repositories (SDRs).

What types of swaps does the Securities and Exchange Commission (SEC) have jurisdiction over and which types of swaps does the CFTC have purview over and why?

The split in jurisdiction between the SEC and CFTC on swaps resembles the general pattern for jurisdiction over futures

and options. The CFTC has exclusive jurisdiction over the vast majority of futures contracts, including those on broad-based security indexes; the SEC has jurisdiction over options on securities, and the CFTC and SEC share jurisdiction over futures on single stocks and narrow-based security indexes. Similar to this pattern, the SEC has jurisdiction over security-based swaps, which are swaps on certain individual securities, like single stock credit derivatives, or swaps on narrow-based indexes. Security-based swaps make up a very small percentage of all swaps. The CFTC has jurisdiction over swaps, as that term is defined in Dodd-Frank, including swaps on broad-based security indexes. The swaps under the CFTC's jurisdiction include interest rate swaps, which make up about 75% of all swaps, foreign exchange swaps, credit derivative swaps on broad-based indexes, and commodity swaps. The statutory definitions of the terms "swap" and "security-based swap" are complex. The CFTC and SEC issued joint guidance on these definitions that was published in the Federal Register on August 13, 2012. (77 Fed. Reg. 48208).

We noticed that the CFTC has been running television ads on SmartCheck. Would you please expand on what SmartCheck is and what has the impact been for the CFTC and the public?

SmartCheck is a national outreach campaign designed to help consumers avoid financial fraud and educate them about smarter investing. The CFTC launched the SmartCheck campaign on November 19, 2014, in furtherance of some of its responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The focus of the campaign is to encourage the public to conduct background checks on their financial professionals using several free databases available through SmartCheck.gov. The CFTC promotes the campaign through print, radio, TV and online commercials, social media, public events, and partnerships with state regulatory entities. To date, a total of more than 100,000 background checks have been performed through the SmartCheck.gov website, with more than a 34 percent month-over-month average increase in such checks since the launch of the campaign.

What is the status of the CFTC reauthorization bill? What would the legislation do to improve the agency's operations and protect the public and the markets?

As you might expect, the CFTC staff is very involved with the reauthorization process. The Office of the General Counsel and the other Divisions of the CFTC, together with the Office of Legislative Affairs, work closely with the staff of our oversight Committees, the Senate Agriculture Committee and the House Agriculture Committee, to provide technical assistance on a wide variety of provisions and possible amendments to the Commodity Exchange Act. The House passed a CFTC reauthorization bill in June 2015. More recently, the Senate Agriculture Committee reported its version to the Senate in May 2016. Many of the provisions of the bills are identical or nearly so. The House bill includes some provisions that have no analogue in the Senate Agriculture Committee bill, including provisions on cost-benefit analysis, cross-border jurisdiction, and CFTC organization and operations. We look forward to working with Congress to improve this legislation as it moves toward its conclusion.

With only a short time left in this Congress, it's unclear whether the reauthorization bill will make any further progress this year.

If a CFTC reauthorization bill doesn't become law this year, the process will have to start from the beginning next year when the 115th Congress convenes in January 2017.

The fact that the reauthorization bill is not finished yet doesn't mean that the CFTC is idle. Dodd-Frank gave us a lot to do. The CFTC is working to address market developments and risks. Among other things, the CFTC is working on rules on position limits, regulation of automated trading, and cybersecurity testing requirements for DCOs, DCMs, SEFs, and SDRs. While our authorization needs to be updated, we still have a lot on our plate.

What is the interplay between the National Futures Association (NFA) and the CFTC? Is it analogous to the relationship between the Financial Industry Regulatory Authority (FINRA) and the SEC?

The CFTC and NFA enjoy a strong working relationship. Our interaction is cooperative and wide ranging. The NFA is the only futures association currently registered with the CFTC. Its membership includes more than 4000 firms and 57,000 individuals. As the self-regulatory organization for the derivatives industry, the NFA functions similarly to FINRA in the securities space. It performs a number of functions that advance the CFTC's mission, including market oversight, examinations, and enforcement.

The NFA promulgates rules that support and complement the regulatory framework established by the CFTC. The NFA screens new CFTC registrants, facilitates regulatory reporting by market participants, investigates potential rules violations, and helps resolve investor disputes. Since the passage of Dodd-Frank, which greatly expanded the CFTC's mission, the agency has delegated significant additional responsibility to the NFA. For example, the NFA now helps resolve swap valuation disputes, and the NFA receives data directly from swap data repositories (SDRs) to support its market supervision and compliance functions. The NFA has been a reliable partner, assisting the CFTC in fulfilling its responsibilities to maintain safe and strong markets, to mitigate systemic risk, and to combat fraud and abuse.

What accomplishment are you most proud of?

Winning the *ICI* case in the United States Court of Appeals for the D.C. Circuit, a case I argued shortly after becoming General Counsel. As I noted previously, the CFTC faced several challenges to our rules implementing the Dodd-Frank Act, but the Investment Company Institute (ICI) and the Chamber of Commerce's challenge to the CFTC's rule reasserting oversight of registered investment companies trading a substantial amount of derivatives was the only case decided by the court of appeals. And the D.C. Circuit established a critical precedent for the Commission in that case, especially with respect to the CFTC's rulemaking obligation to consider costs and benefits under section 15(a) of the Commodity Exchange Act (CEA).

The court rejected ICI's argument that section 15(a) imposed exacting requirements on the CFTC with respect to quantifying the costs of its rules. The court held that the agency had no obligation to "measure the immeasurable" or to conduct "rigorous, quantitative economic analysis." The court also ruled that the agency was justified in adopting the rule based on limited data, observing that such limitations exist "in practically any regulatory endeavor."

This ruling was crucial. Given the success industry previously

had in upending SEC rules for cost-benefit deficiencies, I believe industry viewed CEA section 15(a) as fertile ground for derailing Dodd-Frank reforms. The *ICI* decision sent a message that the CFTC has done its job when it explains the costs and benefits in light of the factors set forth in section 15(a) based on information reasonably available. It was especially rewarding to obtain this result via an opinion by Judge Sentelle, who had authored one of the key cost-benefit decisions invalidating an SEC rule subjecting fixed annuity contracts to SEC regulation and who was on the panel

that decided *Business Roundtable*, which vacated another SEC rule for cost benefit failures one month after I joined the CFTC. ■

Disclaimer: The Commodity Futures Trading Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of Mr. Marcus and do not necessarily reflect the views of the Commission, the Commissioners, or other members of the Commission's staff.

Priceless—An Interview with Robert Wittman, Founder of the FBI's Art Crime Division

by Lauren Lucht Abney

1) Tell me about your background. How did you end up having a passion to recover stolen art for the U.S.?

I started as an FBI agent in 1988. The reason I wanted to join the FBI was because *Miami Vice* was on television at the time, and I liked the show. I thought the FBI would be the group that would do that type of detective work on boats near the water. However, I ended up in Philadelphia, far from boats and water. I was put on the crime squad involving high-jackings between New York and Miami. There was a lot of crime that went on between the two cities. The first art theft cases I was assigned to were in Philadelphia. Two of my first cases were an armed robbery from the Rodin Museum and one from the University of Pennsylvania.

The piece stolen from the Rodin Museum was taken at gunpoint in 1988. The work of art was Auguste Rodin's sculpture, "Man with the Mask of the Broken Nose." This was a critical work in the history of art because it was the first piece created in the impressionist period, and it initiated the impressionist movement. Rodin created the sculpture in the 1860s by accident. He was working in Paris in a barn that had no heat, creating works of art to submit to the standard academy. The sculpture was patterned after the head of a lowly worker named Bebe. Due to the cold temperatures in the barn where Rodin was working, the head cracked in half and the back half of the head fell off of the sculpture. Rodin decided to submit the cracked head to the academy in its broken form. It was a huge success, and the piece was considered to be avant guard. The "Man with the Mask of the Broken Nose" started Rodin's successful career.

I was assigned the Rodin case along with the University of Pennsylvania case. The University case was a crystal ball owned by the Dowager Empress Cixi of China. The University of Pennsylvania had acquired the crystal ball in the 1930s. It was the second largest crystal ball in the world. It was stolen in a burglary, and was worth \$350,000 at the time. I solved both of these cases, and so I started getting all the art theft cases assigned to me. At that time there was no art crime team. The FBI was investigating art theft cases just like regular theft cases, such as a car theft.

Art crime is not about art history, it is about the business of art. Today, the art business is a \$200 billion industry for legitimate art sales, and \$6 billion in illegitimate dealings. The

United States is the largest art market in world, and comprises 40% or \$80 billion a year of the world's art market. To put it in perspective, all professional sports revenue combined is only \$26 billion a year.

2) Did being raised by an antiques dealer influence your passion for art history?

Yes. I knew how to make an art deal because my parents owned three antique stores when I was growing up. They specialized in selling Asian antiques. My mother was a Japanese citizen working on an air force base during the Korean War, and my father met her on base over there. Growing up in an antiques environment was important because it taught me how to do an art deal under cover when I got to the FBI. I knew the lingo, and knew more about making art deals than the criminals did. The criminals did not specialize in art theft cases. They were common criminals committing all types of theft, such as assault, car theft, and bank robberies. They just happened to be doing an art theft at the time. They didn't necessarily know how to do art deals.

3) Tell me about the development of the FBI's art crime division? How did you end up as senior investigator?

Between the years 1988 and 2005, I worked on art theft cases all over the world in 20 different countries. I worked a case in Sweden, and came back to States and realized there was no specialized training here to learn how to recover stolen art. Art theft investigations are very different from car thefts and other types of theft. So I went to FBI headquarters and asked if they would create a team for art crime. They said yes, and put me in charge of it because I had been solving art crime cases for my entire career. I put together a team, and created a specialized program to train agents to investigate art theft. The unit started with 8 agents, and had a small budget. The training was formalized, and the first one took place in Philadelphia. We took the agents to museums to teach them about antiquities. We took them to the Barnes Foundation to give them an appreciation of techniques that would aid in the identification of different artists' styles, and we took them to the Philadelphia Museum of Art for conservation training. The FBI still has this

training every year. The agents travel to different cities to study investigation techniques and to study art. Today, the FBI's art crime team has 14 collateral duty agents, and has recovered \$150 million worth of stolen art since I started the team in 2005.

4) What has been your most exciting and rewarding case?

I can't really give you an answer to that because all of the art I recovered is valuable and important. The most valuable piece I helped recover was a Bill of Rights owned by the state of North Carolina. It was signed by George Washington. The document was stolen by a union trooper in 1865. This was the oldest theft I was involved in. The value of the piece at the time we recovered it in 2003 was \$100 million. Of course, it can't be sold because it is owned by the state of North Carolina.

Another memorable case was the recovery of a U.S. Civil War battle flag. It was carried into battle by one of the first African American regiments in the Battle of Fort Hudson during the Civil War. Both of these pieces are such an important part of our history.

5) What was your role in reclaiming Nazi stolen art?

The FBI didn't do much of that. Those are civil cases, and the FBI specializes in criminal cases. Nazi stolen art cases are based on ownership, and not really considered thefts because the people who now have them did not steal them, and were involved in good faith transactions to buy or inherit them. The title procedures on how to make a claim to recover Nazi stolen art are covered in war treaties and international law rather than U.S. laws.

6) Where does corporate law and art law intersect? Can you describe the affect corporate law has had on any of your cases?

Corporations have large art collections sometimes for tax purposes, education of clients, or the owners enjoy the art. Tax laws are all in play with corporations. Art collections are the property of the corporation and protected by the corporation; they are not owned by individuals. Dealers and auction houses are all corporations too. It's the same for selling and buying art whether it is an individual or a corporation. Corporations can either be victims of art theft or be investigated for theft themselves. I had a case where an insurance company suffered an art theft from a corporation's headquarters. The former CEO of the company stole many pieces of art from the corporation's collection. It happens all the time. I've had three cases that dealt with insurance fraud. Museum curators steal art too.

7) What laws or regulations, in your opinion, should either be promulgated or repealed in order to preserve America's art history and ease the recovery of stolen art?

I think the laws are fine. There are plenty of laws that deal with art theft. The issue is whether or not people pay attention to them, and whether they use the laws to prosecute the criminals.

It is a question of commitment by law enforcement to uphold the statutes and investigate the thefts. They are viewed many times as victimless crimes, but that is not true. There are victims when art is stolen. Sometimes the victims are insurance companies, and when they pay for the lost art we all suffer because our premiums increase. We are all victims of it financially, and we are also victims because it is a cultural loss for all of humanity when a piece is stolen from a museum. It's a piece of genius we no longer have access to.

8) What is your latest book about?

It is titled, *The Devil's Diary*, and is about recovering the private diary of Alfred Rosenberg who was the chief civil scientist for Hitler during WWII. Alfred Rosenberg was in charge of taking art from the Jews in Europe. He stored it and compiled it to put in the Fuhrer Museum. He also took all of their private belongings with him back to Germany. He came up with the idea of Holocaust, and was with Hitler from 1919 to 1945 until Hitler died.

A 500 page diary he had written was discovered during the Nuremberg trials. He was hung and the diary went missing. It was taken by a prosecutor at the trial. There are only three diaries that exist that were written by high-ranking Nazi officials.

We found the diary in upstate New York. The secretary of the prosecutor had the diary in her possession. I started the case in 2001 and we recovered it in 2013. The diary had never been translated before we recovered it. The diary is now in the U.S. Holocaust Museum in Washington D.C. *The Devil's Diary* comes out on March 29th, 2016, and is published by Harper Collins.

9) What are you currently working on besides your book?

I still recover artwork. I provide different art services to clients such as collection management, art theft recovery, security and recovery, and I create reports for clients regarding due diligence to see if their art practices have been executed correctly. I make sure clients procure art legally, make sure it's authentic and that they have the proper contracts to create works of art.

10) Any concluding remarks?

The theft of a Rembrandt self-portrait from the Swedish National Museum in Stockholm is a good reminder of how important it is to recover stolen art. I worked with the Swedish police and the Danish government to recover a Rembrandt self-portrait and two Renoirs that were stolen at gunpoint during the daytime in 2000. We recovered all three of them in Copenhagen. One Renoir was recovered in 2001, and the other Renoir and Rembrandt self-portrait were recovered in 2005. At the time of recovery all three paintings were in the hands of different criminals. This case illustrates the importance of cultural property, and the need for governments to work together in order to recover these priceless pieces for the benefit of society. ■

Federal Bar Association Application for Membership

The Federal Bar Association offers an unmatched array of opportunities and services to enhance your connections to the judiciary, the legal profession, and your peers within the legal community. Our mission is to strengthen the federal legal system and administration of justice by serving the interests and the needs of the federal practitioner, both public and private, the federal judiciary, and the public they serve.

Advocacy

The opportunity to make a change and improve the federal legal system through grassroots work in over 90 FBA chapters and a strong national advocacy.

Networking

Connect with a network of federal practitioners extending across all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands.

Leadership

Governance positions within the association help shape the FBA's future and make an impact on the growth of the federal legal community.

Learning

Explore best practices and new ideas at the many Continuing Legal Education programs offered throughout the year—at both the national and chapter levels.

Expand your connections, advance your career

THREE WAYS TO APPLY TODAY: Join online at www.fedbar.org; Fax application to (571) 481-9090; or Mail application to FBA, PO Box 79395, Baltimore, MD 21279-0395. For more information, contact the FBA membership department at (571) 481-9100 or membership@fedbar.org.

Applicant Information

First Name _____ M.I. _____ Last Name _____ Suffix (e.g. Jr.) _____ Title (e.g. Attorney At Law, Partner, Assistant U.S. Attorney) _____
 Male Female Have you been an FBA member in the past? yes no Which do you prefer as your primary address? business home

Firm/Company/Agency _____ Number of Attorneys _____
Address _____ Suite/Floor _____
City _____ State _____ Zip _____ Country _____
() _____
Phone _____ Email Address _____

Address _____ Apt. # _____
City _____ State _____ Zip _____ Country _____
() _____ / / _____
Phone _____ Date of Birth _____
Email Address _____

Bar Admission and Law School Information (required)

U.S. Court of Record: _____
State/District: _____ Original Admission: / /

Foreign Court/Tribunal of Record: _____
Country: _____ Original Admission: / /

Tribal Court of Record: _____
State: _____ Original Admission: / /

Students Law School: _____
State/District: _____ Expected Graduation: / /

Authorization Statement

By signing this application, I hereby apply for membership in the Federal Bar Association and agree to conform to its Constitution and Bylaws and to the rules and regulations prescribed by its Board of Directors. I declare that the information contained herein is true and complete. I understand that any false statements made on this application will lead to rejection of my application or the immediate termination of my membership. I also understand that by providing my fax number and e-mail address, I hereby consent to receive faxes and e-mail messages sent by or on behalf of the Federal Bar Association, the Foundation of the Federal Bar Association, and the Federal Bar Building Corporation.

Signature of Applicant _____ **Date** _____
(Signature must be included for membership to be activated)

*Contributions and dues to the FBA may be deductible by members under provisions of the IRS Code, such as an ordinary and necessary business expense, except 4.5 percent which is used for congressional lobbying and is not deductible. Your FBA dues include \$15 for a yearly subscription to the FBA's professional magazine.

Application continued on the back



Federal Bar Association

Membership Categories and Optional Section, Division, and Chapter Affiliations

Membership Levels

Sustaining Membership

Members of the association distinguish themselves when becoming sustaining members of the FBA. Sixty dollars of the sustaining dues are used to support educational programs and publications of the FBA. Sustaining members receive a 5 percent discount on the registration fees for all national meetings and national CLE events.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years.....	<input type="radio"/> \$165	<input type="radio"/> \$145
Member Admitted to Practice 6-10 Years	<input type="radio"/> \$230	<input type="radio"/> \$205
Member Admitted to Practice 11+ Years	<input type="radio"/> \$275	<input type="radio"/> \$235
Retired (Fully Retired from the Practice of Law)	<input type="radio"/> \$165	<input type="radio"/> \$165

Active Membership

Open to any person admitted to the practice of law before a federal court or a court of record in any of the several states, commonwealths, territories, or possessions of the United States or in the District of Columbia.

	Private Sector	Public Sector
Member Admitted to Practice 0-5 Years.....	<input type="radio"/> \$105	<input type="radio"/> \$80
Member Admitted to Practice 6-10 Years	<input type="radio"/> \$165	<input type="radio"/> \$140
Member Admitted to Practice 11+ Years	<input type="radio"/> \$210	<input type="radio"/> \$170
Retired (Fully Retired from the Practice of Law)	<input type="radio"/> \$105	<input type="radio"/> \$105

Associate Membership

Foreign Associate

Admitted to practice law outside the U.S. \$210

Law Student Associate

First year student (includes four years of membership) \$50
 Second year student (includes three years of membership) \$30
 Third year student (includes two years of membership) \$20
 One year only option \$20

All first, second and third year student memberships include an additional free year of membership starting from your date of graduation.

Dues Total: _____

Practice Area Sections

- | | | | |
|---|------|--|------|
| <input type="radio"/> Admiralty Law | \$25 | <input type="radio"/> Indian Law | \$15 |
| <input type="radio"/> Alternative Dispute Resolution...\$15 | | <input type="radio"/> Intellectual Property Law | \$10 |
| <input type="radio"/> Antitrust and Trade Regulation...\$15 | | <input type="radio"/> International Law | \$10 |
| <input type="radio"/> Banking Law | \$20 | <input type="radio"/> Labor and Employment Law.....\$15 | |
| <input type="radio"/> Bankruptcy Law.....\$25 | | <input type="radio"/> Qui Tam Section | \$15 |
| <input type="radio"/> Civil Rights Law | \$10 | <input type="radio"/> Securities Law Section | \$0 |
| <input type="radio"/> Criminal Law.....\$10 | | <input type="radio"/> Social Security.....\$10 | |
| <input type="radio"/> Environment, Energy, and
Natural Resources | \$15 | <input type="radio"/> State and Local Government
Relations.....\$15 | |
| <input type="radio"/> Federal Litigation | \$20 | <input type="radio"/> Taxation | \$15 |
| <input type="radio"/> Government Contracts.....\$20 | | <input type="radio"/> Transportation and
Transportation Security Law.....\$20 | |
| <input type="radio"/> Health Law.....\$15 | | <input type="radio"/> Veterans and Military Law | \$20 |
| <input type="radio"/> Immigration Law.....\$10 | | | |

Career Divisions

- Corporate & Association Counsel (in-house counsel and/or corporate law practice)\$20
 Federal Career Service (past/present employee of federal government)N/C
 Judiciary (past/present member or staff of a judiciary)N/C
 Senior Lawyers* (age 55 or over).....\$10
 Younger Lawyers* (age 40 or younger or admitted less than 10 years)N/C
 Law Student DivisionN/C

*For eligibility, date of birth must be provided.

Sections and Divisions Total: _____

Chapter Affiliation

Your FBA membership entitles you to a chapter membership. Local chapter dues are indicated next to the chapter name (if applicable). If no chapter is selected, you will be assigned a chapter based on geographic location. *No chapter currently located in this state or location.

- | | | | |
|--|--|--|--|
| Alabama
<input type="radio"/> Birmingham
<input type="radio"/> Montgomery
<input type="radio"/> North Alabama | Illinois
<input type="radio"/> Central District of Illinois-\$25
<input type="radio"/> Chicago
<input type="radio"/> P. Michael Mahoney (Rockford, Illinois)
<input type="radio"/> Chapter
<input type="radio"/> Southern District of Illinois
<input type="radio"/> Tucson-\$10 | New Hampshire
<input type="radio"/> New Hampshire-\$10
New Jersey
<input type="radio"/> New Jersey
New Mexico
<input type="radio"/> New Mexico
New York
<input type="radio"/> Eastern District of New York
<input type="radio"/> Southern District of New York
<input type="radio"/> Western District of New York | Rhode Island
<input type="radio"/> Rhode Island
South Carolina
<input type="radio"/> South Carolina
South Dakota
<input type="radio"/> South Dakota
Tennessee
<input type="radio"/> Chattanooga
<input type="radio"/> Knoxville Chapter
<input type="radio"/> Memphis
<input type="radio"/> Mid-South
<input type="radio"/> Nashville
<input type="radio"/> Northeast Tennessee
Texas
<input type="radio"/> Austin
<input type="radio"/> Dallas-\$10
<input type="radio"/> El Paso
<input type="radio"/> Fort Worth
<input type="radio"/> San Antonio
<input type="radio"/> Southern District of Texas-\$25
<input type="radio"/> Waco
Utah
<input type="radio"/> Utah
Vermont*
<input type="radio"/> At Large
Virgin Islands
<input type="radio"/> Virgin Islands
Virginia
<input type="radio"/> Northern Virginia
<input type="radio"/> Richmond
<input type="radio"/> Roanoke
<input type="radio"/> Hampton Roads Chapter
Washington*
<input type="radio"/> At Large
West Virginia
<input type="radio"/> Northern District of West Virginia-\$20
Wisconsin*
<input type="radio"/> At Large
Wyoming
<input type="radio"/> Wyoming |
| Alaska
<input type="radio"/> Alaska | Indiana
<input type="radio"/> Indianapolis
<input type="radio"/> Northern District of Indiana | Iowa
<input type="radio"/> Iowa-\$10
Kansas
<input type="radio"/> Kansas and Western District of Missouri
Kentucky
<input type="radio"/> Kentucky
Louisiana
<input type="radio"/> Baton Rouge
<input type="radio"/> Lafayette/Acadiana
<input type="radio"/> New Orleans-\$10
<input type="radio"/> North Louisiana
Maine
<input type="radio"/> Maine
Maryland
<input type="radio"/> Maryland
Massachusetts
<input type="radio"/> Massachusetts-\$10
Michigan
<input type="radio"/> Eastern District of Michigan
<input type="radio"/> Western District of Michigan
Minnesota
<input type="radio"/> Minnesota
Mississippi
<input type="radio"/> Mississippi
Missouri
<input type="radio"/> St. Louis
<input type="radio"/> Kansas and Western District of Missouri
Montana
<input type="radio"/> Montana
Nebraska
<input type="radio"/> Nebraska
Nevada
<input type="radio"/> Nevada | North Carolina
<input type="radio"/> Eastern District of North Carolina
<input type="radio"/> Middle District of North Carolina
<input type="radio"/> Western District of North Carolina
North Dakota
<input type="radio"/> North Dakota
Ohio
<input type="radio"/> Cincinnati/Northern Kentucky-John W. Peck
<input type="radio"/> Columbus
<input type="radio"/> Dayton
<input type="radio"/> Northern District of Ohio-\$10
Oklahoma
<input type="radio"/> Oklahoma City
<input type="radio"/> Northern/Eastern Oklahoma
Oregon
<input type="radio"/> Oregon
Pennsylvania
<input type="radio"/> Eastern District of Pennsylvania
<input type="radio"/> Middle District of Pennsylvania
<input type="radio"/> Western District of Pennsylvania
Puerto Rico
<input type="radio"/> Hon. Raymond L. Acosta/Puerto Rico-\$10 |

Chapter Total: _____

Payment Information

TOTAL DUES TO BE CHARGED

(membership, section/division, and chapter dues): \$ _____

Check enclosed, payable to Federal Bar Association
 Credit: American Express MasterCard Visa

 Name on card (please print)

 Card No.

 Exp. Date

 Signature

 Date