

THE UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT *of* NEW YORK

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**Department of Justice**

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Wednesday, December 2, 2020

## **Licensed Attorney And Disbarred Attorney Charged With Securities Fraud For Roles In Fraudulent Opinion Letter Scheme**

Audrey Strauss, the Acting United States Attorney for the Southern District of New York, and Carl W. Hoecker, the Inspector General of the Office of Inspector General of the U.S. Securities and Exchange Commission ("SEC-OIG"), announced today the unsealing of an Indictment in Manhattan federal court charging RICHARD RUBIN and THOMAS CRAFT with securities fraud. The Indictment alleges that RUBIN, a disbarred attorney, and CRAFT, an attorney licensed in Florida, engaged in a fraudulent scheme in which CRAFT falsely represented that he had undertaken certain legal work in connection with three types of attorney opinion letters, all of which enabled the relevant securities to be sold to the investing public. In truth and in fact, RUBIN, despite his disbarment, had undertaken all of the legal work attested to in the letters; CRAFT merely served as a "rubber stamp" on the letters in exchange for tens of thousands of dollars in monetary compensation. RUBIN was taken into custody today in New York, New York, and will be presented today before Magistrate Judge Katharine H. Parker in Manhattan federal court. CRAFT was taken into custody today in West Palm Beach, Florida, and will be presented today in federal court in Florida. The case has been assigned to United States District Judge Paul A. Engelmayer.

Acting U.S. Attorney Audrey Strauss said: "As alleged, rather than act as gatekeepers against fraud, the defendants used their positions as attorneys – albeit one of them disbarred – to actively carry out a fraud, working to generate dozens of attorney opinion letters containing false representations that brought false comfort to the investing public that certain legal work had been performed and certain information had been confirmed as accurate.

SEC Inspector General Carl W. Hoecker said: "Today's criminal indictment demonstrates our commitment to holding bad actors accountable for undermining the integrity of the securities registration system."

As alleged in the Indictment unsealed today in Manhattan federal court:[1]

### ***Securities Registration Requirements and SEC Rule 144***

Under the Securities Act of 1933 (the "Securities Act"), anyone seeking to sell a security must first register the offering of that security unless an exemption applies. See 15 U.S.C. § 77e. This registration requirement protects investors by promoting disclosure of information pertinent to informed investment decisions.

A company registering the offer of securities must complete a registration statement such as SEC Form S-1 before the securities can be listed on a national exchange and publicly traded. SEC Form S-1 contains information pertinent to informed investment decisions, including, among other things, information on the company's business operations, the company's financial condition, and a description of the company's management. In connection with SEC Form S-1, the company is required to file an opinion letter (the "Form S-1 Opinion Letter") from a licensed attorney regarding the legality of the securities being offered or sold pursuant to the registration statement. A company's SEC Form S-1 and the Form S-1 Opinion Letter are available to the public on the SEC's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR").

"Restricted securities" refers to securities acquired in unregistered, private sales from the issuing company or from an affiliate of the issuer, with "affiliate" meaning a person that directly or indirectly controls, or is controlled by, or is under common control with, an issuer. Affiliates can also include an executive officer or a director or large shareholder who is in a relationship of control with respect to the issuing company. Restricted securities bear a legend indicating that the securities may not be resold in the marketplace unless they are registered with the SEC or are exempt from such registration requirements.

Securities Act Rule 144 ("Rule 144"), codified at 17 C.F.R. § 230.144, provides a registration exemption for the resale of restricted securities. Specifically, it permits the public resale of restricted securities if a number of conditions are met, including conditions relating to how long the securities are held, the way in which they are sold, the public information available to investors about the securities, and the amount that can be sold at any one time. However, even if these conditions are met, the sale of restricted securities to the public is still not permitted until a transfer agent removes the "restricted" legend from the security.

The term "transfer agent" refers to a company that keeps track of individuals and entities that own the stocks and bonds of a given company that has publicly traded securities. Among other things, transfer agents issue and cancel certificates to reflect changes in ownership, serve as the company's intermediary for payouts, exchanges, or mailings, and handle lost, destroyed or stolen certificates. Transfer agents also, when appropriate, remove the "restricted" legend from securities.

A Rule 144 Seller's Representation Letter, or "Seller's Representation Letter," is a letter to a transfer agent to establish certain facts underlying a legal opinion that the securities at issue can be sold publicly pursuant to Rule 144. The transfer agent relies on the Seller's Representation Letter in determining whether to remove the restricted legend from a security.

### ***Over-the-Counter Securities and OTC Markets Group***

Over-the-counter ("OTC") securities are securities that are traded between two counterparties outside of a formal securities exchange. OTC Markets Group ("OTC Markets") is a company headquartered in New York, New York that provides price and liquidity information for OTC securities.

OTC Markets requires issuers seeking to be quoted on certain tiers of OTC Markets to hire a licensed attorney to review company records and submit a letter to OTC Markets (an "OTC Markets Attorney Letter") regarding whether information publicly disclosed by the issuer is in compliance with the condition in SEC Rule 144 governing the public information available to investors about the issuer. OTC Markets relies on the OTC Markets Attorney Letter to determine whether an issuer's security may be quoted on OTC Markets. OTC Markets Attorney Letters are available to the public on the OTC Markets website.

### ***The Scheme to Defraud***

From at least in or about 2011 through at least in or about September 2018, RUBIN and CRAFT, the defendants, participated in a fraudulent scheme in which CRAFT falsely represented that he had undertaken certain legal work in connection with Seller's Representation Letters, OTC Markets Attorney Letters, and S-1 Opinion Letters, all of which enabled the relevant securities to be sold to the investing public. In addition, in

connection with the securities of certain issuers, RUBIN, the defendant, falsely represented that he was an attorney in Seller's Representation Letters and OTC Markets Attorney Letters, all of which enabled the relevant securities to be sold to the investing public. The false representations were in letters pertaining to over a dozen companies.

RUBIN, 78, of Brooklyn, New York, and CRAFT, 55, of Tequesta, Florida, are each charged with one count of conspiracy to commit securities fraud, which carries a maximum sentence of five years in prison, one count of securities fraud in violation of 18 U.S.C. §§ 1348 and 2, which carries a maximum sentence of 25 years in prison, and one count of securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2, which carries a maximum sentence of 20 years in prison. The maximum potential sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendants will be determined by the judge.

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Ms. Strauss praised the investigative work of the SEC OIG. Ms. Strauss also thanked the U.S. Postal Inspection Service, Office of the Inspector General, which assisted in the investigation. Ms. Strauss also thanked the SEC Division of Enforcement, which brought a separate civil enforcement action against the defendants.

This case is being handled by the Office's Securities and Commodities Fraud Task Force. Assistant U.S. Attorneys Martin Bell and Jordan Estes are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

[1] As the introductory phrase signifies, the entirety of the text of the Indictment, and the description of the Indictment set forth herein, constitute only allegations, and every fact described should be treated as an allegation.

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**Attachment(s):**

[Download U.S. v. Richard Rubin and Thomas Craft indictment \(20cr632\)](#)

**Topic(s):**

Securities, Commodities, & Investment Fraud

**Component(s):**

[USAO - New York, Southern](#)

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