



David M. Rosenfield

*Counsel*

[drosenfield@herrick.com](mailto:drosenfield@herrick.com)

(212) 592-1513 PHONE

(212) 545-2326 FAX

David Rosenfield concentrates his practice in white collar criminal defense, corporate internal investigations, securities regulation and litigation and bank regulation.

David represents and defends individuals and corporations before federal agencies such as the Department of Justice, U.S. Attorneys' Offices, the SEC, FDIC, and the Department of Health and Human Services; state agencies, such as the New York State Attorney General's Office and the New Jersey Division of Criminal Justice; and self-regulatory agencies, such as the Financial Industry Regulatory Authority.

David is a former prosecutor in the Frauds Division of the U.S. Attorney's Office for the District of New Jersey in Newark. David also has prior experience as an attorney in the Division of Enforcement of the Securities and Exchange Commission in Washington, D.C. David is a past chairperson of the White Collar Crime Committee of the American Bar Association's Business Law Section.

Prior to joining Herrick, David was senior counsel and manager of legal process at The Bank of New York, where he advised the bank's Anti-Money Laundering Committee. He also conducted internal investigations, coordinated the bank's responses to inquiries from federal and state bank regulators, and supervised the bank's 15-person legal process department, which processed and responded to legal papers served on the bank.

#### Government Prosecutorial Experience

While serving as a prosecutor in the Frauds Division of the U.S. Attorney's Office for the District of New Jersey, David prosecuted white collar criminal cases, supervised lengthy investigations and coordinated the activities of Assistant U.S. Attorneys, federal law enforcement agents and investigators from regulatory agencies.

One of David's cases, which involved a \$100 million fraud against customers of a boiler-room brokerage firm, resulted in 14 guilty pleas and two convictions following a jury trial. David also was involved in two securities market manipulation cases, in which there were lengthy jury trials that resulted in convictions. David received letters of commendation from the Attorney General of the United States and the Director of the FBI for his successful prosecution of one of those manipulation cases, *U.S. v. Eric Wynn, et al.* (D.N.J.).

When David was an attorney in the Division of Enforcement of the SEC, he co-authored a paper entitled *An Overview of Market Manipulation: Legal and Practical Aspects*.

#### Services

- White Collar Defense & Investigations
- Securities Litigation and Enforcement
- Corporate Litigation

- Litigation
- Health Care

### Education

- University of Pennsylvania Law School (J.D., 1982)
- Ohio State University (B.A., *cum laude*, 1979)
  - Phi Beta Kappa

### Memberships & Associations

- American Bar Association
  - Business Law Section
  - Former chairperson of the White Collar Crime Committee

## Representative Matters

### Investment Advisor – Department of Justice and SEC Investigations

Representing an SEC registered investment advisor to several private equity funds with over \$1.0 billion in assets under management, in connection with investigations of alleged securities law violations by the DOJ, the SEC and state securities regulators.

### Stock Promoter – Department of Justice and SEC Investigations

Representing a stock promoter in wide-ranging investigations by the Department of Justice and the SEC of securities fraud in the promotion and potential manipulation of the stocks of various start-up companies.

### Ex-President of Guatemala – Department of Justice Criminal Prosecution

Herrick represented former Guatemalan President Alfonso Portillo in defense of a federal money laundering conspiracy charge and other charges following his extradition to the United States. President Portillo pled guilty to a reduced charge and other charges following successful negotiations with the U.S. Attorney's Office, Southern District of New York. Herrick then successfully argued to the U.S. Bureau of Prisons that it credit time already served by President Portillo - including time served in Guatemala while awaiting extradition - to his sentence, greatly reducing the period of incarceration ultimately served.

### Former Teammates of Lance Armstrong – Department of Justice and USADA Investigation

Herrick represented a professional cycling team, and three of its cyclists, in a criminal investigation by the U.S. Department of Justice (DOJ), and a related investigation by the United States Anti-Doping Agency (USADA), concerning the use of performance enhancing drugs by the riders' former teammate Lance Armstrong. Leveraging our clients' early cooperation in the investigation, we were able to avoid any criminal charges against the cycling team and the riders, and enter into favorable settlements with USADA.

### Securities Trader – Federal Criminal and SEC Civil Insider Trading Charges

Representing a securities trader in a Department of Justice criminal action and a related SEC civil action where our client is charged with participating in an insider trading scheme in which the securities of public companies were sold short in advance of secondary offerings, allegedly based upon material, non-public information. In the criminal case, our client recently received a sentence of Probation.

### Investment Advisor – Successful Conclusion to Internal Investigation

Conducted an internal investigation for a nationally recognized investment adviser to a series of hedge funds following a whistleblower's complaint concerning SEC compliance and operational issues. Upon submission of a report of our investigation, which determined that the whistleblower's allegations had no merit, the SEC never brought charges.

### Hedge Fund – SEC Investigation

Successful defense of a prominent hedge fund in connection with an SEC investigation of alleged misrepresentations and the alleged failure to disclose material facts to investors. We prepared a Wells Submission which resulted in decision by the SEC to drop the investigation.

### NYC Attorney – Joint US Attorney and SEC Investigations into Alleged Misappropriation of Funds and Market Manipulation

Represented a prominent former New York City attorney in a joint federal criminal investigation, conducted by the U.S. Attorney's Office, District of Columbia and the SEC, into alleged misappropriation of funds of a large foreign public company and market manipulation of the securities of several small U.S. public companies. Herrick was able to resolve the federal criminal charges against our client through a guilty plea to a single count of obstruction of justice. The client was sentenced to two years of probation, later reduced to one year. Notwithstanding the criminal charges involving the sale of securities, the SEC did not bring charges.

### Private Equity Firm – Settlement with SEC – Alleged Violations of Broker-Dealer Registration Requirements

Herrick represented a prominent real estate private equity firm in a precedent-setting and favorable settlement with the Securities and Exchange Commission related to the use of a finder in raising capital and the application of broker-dealer registration requirements.

### International Art Gallery-Internal Investigation

Conducted an internal investigation on behalf of an internationally recognized art gallery concerning the authenticity of certain paintings bought and sold by the gallery.

### Medical Device Company Executive – Grand Jury and Regulatory Investigations

Represented a medical device company's former Vice President of Sales in parallel federal grand jury and Health and Human Services Department investigations of alleged pay-offs to doctors.

### Former Bank Directors – Favorable Resolution of FDIC Investigation

Herrick negotiated a favorable settlement on behalf of three directors of a failed New York City community bank, resolving claims by the FDIC that the directors had failed to exercise due care in their oversight of the bank's loan portfolio.

## Publications

### September 2019

Representing Drug Companies in High-Profile Opioid Cases: Lessons from the Insys Therapeutics and Rochester Drug Co-Operative Cases

### July 2019

Robert Mueller's Statement About His Report, and His Congressional Testimony --

Supplement to Article on the False Statements Charges Brought During the Mueller Investigation

April 2019

The Importance of Full Disclosure to Your White Collar Defense Attorney

February 2019

Lessons from the Mueller Investigation: What to Do When the Government Comes Knocking

September 2016

New Jersey Federal Criminal and Regulatory Alert

December 2, 2015

New Jersey Federal Criminal and Regulatory Alert

May 2015

The Seven Signs of a Healthy Food Company - We're Not Talking Financials: Do you Have Your Food Safety House in Order?

*Food Processing Magazine*

April 2012

Lie and Face Jail Time, Says the Department of Justice

March 2012

Financial Firm Entitled to Restitution from Rogue Employee

September 2010

False Statements to the Government Can Land You in Jail

August 28, 2009

When Should a Company Voluntarily Disclose Wrongful Conduct to the Government? Factors to Consider, Part I

Bureau of National Affairs (BNA) White Collar Crime Report

September 11, 2009

When Should a Company Voluntarily Disclose Wrongful Conduct to the Government? Factors to Consider, Part II

BNA White Collar Crime Report

June 2009

Dealing with the Surprise Government Interview

Micro-Cap Review

January 23, 2009

The DOJ's Corporate Leniency Policy—Part I

Competition Law 360

January 30, 2009

The DOJ's Corporate Leniency Policy — Part II

Competition Law 360

September 2008

FBI Expands Its Corporate Fraud Investigations in Response to Recent Chaos in the Financial Markets

April 2008

Two Key Current Money Laundering Issues for Banks  
Financial Institutions Alert

March 2008

Identity Theft Program Requirements Under the Fair and Accurate Credit Transactions Act  
Financial Institutions Alert

## Speaking Engagements and Media Commentary

David regularly speaks at seminars and authors articles on government investigations, government interviews, corporate internal investigations, securities industry regulation, including insider trading and anti-money laundering compliance.

He has appeared on *CNBC*, *PBS* and *Bloomberg Television* to discuss white collar criminal matters such as the Madoff and Rajaratnam cases, and has been quoted on white collar issues in various national publications.

David Rosenfeld discussing whether the guilty verdict in the Rajaratnam trial will help restore investor confidence and its impact on hedge funds on *CNBC News*.