

# Jonathan Rotenberg

## Partner

New York Office

+1.212.940.6405

jonathan.rotenberg@katten.com



### Practices

FOCUS: Litigation  
Antitrust and Competition  
Securities Litigation

### Education

JD, New York University School of Law  
BA, New York University

### Bar Admissions

New Jersey  
New York

### Court Admissions

US District Court, District of New Jersey  
US District Court, Eastern District of New York  
US District Court, Southern District of New York

### Community Involvements

New York State Bar Association

Rotenberg is a premier securities litigator, antitrust counselor, and regulatory adviser. With wisdom and experience beyond his years, Jonathan defends public companies, officers, directors and financial institutions in high-stakes securities litigation in both federal and state courts. Jonathan's robust regulatory practice focuses on guiding his clients through the merger clearance process both under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act) and before the Committee on Foreign Investment in the United States (CFIUS).

### An industry-recognized securities litigator

Jonathan has spent almost two decades defending public companies and financial institutions against securities fraud and derivative claims in federal and state courts and in arbitration proceedings.

A true "outside the box" thinker, Jonathan brings a determined and unique approach to his advocacy, leaving no stone unturned in finding the right litigation strategy for his clients. In past cases, his determination has driven him to master Cayman Islands law in order to defeat a derivative claim, and mine public filings to unearth evidence that a seemingly strong securities claim was time-barred — leading to an authoritative Second Circuit decision on the subject. Whatever the specifics of the case, clients rely on Jonathan's creativity and tenacity to result in effective arguments that opposing counsel does not see coming.

### A thoughtful and experienced antitrust counselor, leading HSR professional, and regulatory adviser

Jonathan has guided hundreds of clients through the merger clearance process under the HSR Act, advising on when to file, overseeing a thoughtful and efficient filing process, advising on permissible pre-closing activities and information sharing, and shepherding transactions through to completion.

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Jonathan advises clients in industries spanning the entire range of the global economy, including health care, pharmaceuticals, telecommunications, energy, transportation, technology, sports and entertainment, shipping, finance and investment, lending, food production, education, infrastructure, home furnishings, clothing and apparel, automotive, and gaming.

Jonathan also is a seasoned CFIUS counselor. In this capacity, Jonathan regularly advises buyers and sellers on their filing obligations and manages regulatory filings with the Committee.

## Representative Experience

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### Securities Litigation

- Defended former officers of merger target sued post-closing for securities fraud by investors of the buyer, a public company.
- Defended publicly traded provider of physical therapy services and its executive officers against securities fraud claims arising out of a material restatement. Argued and won complete dismissal on the grounds that the complaint failed to plead a strong inference of *scienter*.
- Defended a pharmaceutical company and certain of its officers and directors in a putative securities class action lawsuit filed in the US District Court for the District of New Jersey. Plaintiff alleged that defendants violated Section 10(b) and Section 11 by making optimistic statements about approval of its lead drug candidate by the European Medicines Agency based on a Phase 2 study without disclosing allegedly critical statements the EMA made during the process. The court granted defendants' motion to dismiss, finding as a matter of law that biopharmaceutical companies have no duty to disclose negative interim feedback by regulators.
- Defended in Delaware Chancery Court the largest shareholder in a publicly traded digital signage company against dilution and breach of fiduciary duty claims arising out an offering and subsequent "go private" transaction. After our motion to dismiss was filed, plaintiff agreed to

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dismiss shareholder from the case for no consideration.

- Represented an international developer and manufacturer of nutritional ingredients and medical foods, and its officers and directors, in a securities class action brought under Sections 11, 12(a)(2) and 15 of the Securities Act and Sections 10(b) and 20 of the Securities Exchange Act in the US District Court for the District of New Jersey. Plaintiffs alleged that Katten's clients failed to disclose that sales of one of its products would be greatly affected by changes in the Chinese regulations of infant formula manufacturers. Succeeded in getting most of the claims dismissed on the pleadings, after which plaintiff settled the remaining claims for substantially less than defendants' insurance policy limits.
- Defended former officers of publicly traded green energy start-up against a liquidating trustee's claim of securities fraud. Persuaded Judge Preska that the claims were time-barred under the Supreme Court's 2010 *Merck v. Reynolds*. The US Court of Appeals for the Second Circuit unanimously affirmed.
- Defended Cayman Islands fund in a shareholder derivative complaint alleging breach of fiduciary duties. The case raised unique questions under Cayman Islands law that had only been addressed by a handful of US courts, and never by a federal or state appellate court. Successfully persuaded the judge to dismiss for lack of standing under Cayman Islands law. Won affirmance in a case of first impression among US appellate courts.
- Represented financial institution seeking recovery against principals of a borrower under a "bad boy" guaranty based on the allegation that the borrower's filing of a *lis pendens* and related lawsuit involving the subject property acted as an encumbrance on the property, thereby triggering the liability provisions of the guaranty. Quickly obtained summary judgment on liability on behalf of the plaintiff without any discovery. The decision was unanimously affirmed on appeal.
- Defended China-based, cutting-edge battery producer, its current and former officers and directors, and its largest shareholder, in securities fraud and stockholder derivative suits filed in the US District Court for the

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Southern District of New York.

- Defended pharmaceutical company and certain of its officers against a putative securities class action lawsuit filed in the US District Court for the District of New Jersey. Plaintiff alleged that defendants misrepresented the likelihood that the FDA would approve the client's leading drug candidate and thereby caused its stock price to be artificially inflated.
- Defense of Israeli food manufacturer and its officers and directors in securities fraud suit stemming from Israel Securities Authority's arrest of majority owner and co-Chairman on suspicion of looting the company.

## **Antitrust and Regulatory**

- Various hospital systems in their acquisitions and sales of hospitals and physician practices.
- Numerous private equity clients in their acquisitions and sales of portfolio companies operating across the entire US economy.
- Investor groups in acquisitions of several NHL, MLB, and NBA franchises.
- Chinese investor in his acquisition of intellectual property for a fuel-efficient airplane engine.
- Public company client in acquisition of stevedore rights at various US maritime ports.
- A cryptocurrency exchange in its sale to a major US exchange.
- A buyer in the acquisition of the cybersecurity arm of a large US telecommunications provider.

## **Recognitions**

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*Recognized or listed in the following:*

- *Benchmark Litigation*
  - Under 40 Hotlist, 2019–2021

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## News

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- Katten Represented Sawai Group in its Sale of Upsher-Smith to Bora Pharmaceutical Holdings (January 23, 2024)
- Katten Represented Pinstripes in Combination With Banyan Acquisition Corporation (January 12, 2024)
- Katten Represents Buyers Acquiring Controlling Ownership Interest in Dallas Mavericks (January 4, 2024)
- Katten Represents Highlander Partners in Benestar Brands Merger With Palmex (December 18, 2023)
- Katten Represents Buyer Group in Majority Stake Purchase of Charlotte Hornets (September 6, 2023)
- Katten Securities Litigation Team Scores a Precedent-Setting Victory in the Second Circuit (October 7, 2022)
- Katten is Representing Publicly-Traded Business Development Companies Managed by SLR Capital Partners, LLC in Merger (December 7, 2021)
- Katten Attorneys Help Drive \$3.2 Billion US Car Dealership Deal (October 6, 2021)
- Andrew Demko, Becky Lindahl, Jonathan Rotenberg and Peter Wilson Named to *Benchmark Litigation's* Under 40 Hot List (July 23, 2021)
- Katten Represents Utopia Global in Sale to Prometheus Group (October 21, 2020)
- Katten Names New Partners (August 1, 2017)
- Katten Ranked in Top Five of Hotel M&A Deals (October 11, 2016)
- Katten Wins Ruling in Favor of Former Waste2Energy Holdings Executives (January 8, 2015)

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## Publications

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- Q&A – FTC Rule Banning Non-Competes With Workers (April 25, 2024)
- Financial Markets and Funds *Quick Take* | Issue 23 (February 2024)
- Guest Post: Supreme Court Considers Whether Pure Omissions Can Support Section 10(b) Liability | *The D&O Diary* (February 6, 2024)
- Financial Markets and Funds Quick Take | Issue 11 (February 21, 2023)
- Artificial Intelligence: The New Frontier for Board Oversight? (December 20, 2022)
- Financial Markets and Funds Quick Take | Issue 8 (November 14, 2022)
- Ninth Circuit Invokes Lorenzo to Revive Scheme Liability Claims (June 29, 2021)
- Section 11: Cases in State Court Post-*Cyan* – Is the Tide Turning? (May 18, 2020)
- The Rapid Demise of *Gentile* Picks Up (Even More) Speed (October 7, 2019)
- Blockchain Technology May Enable Tracing in Securities Act Litigation (March 22, 2018)
- *Corporate & Financial Weekly Digest* (Weekly) | *Author*

## Presentations and Events

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- Chubb Preferred Securities Panel Counsel Conference (June 27, 2023) | *Panelist* | *Bankruptcy Claims – Procedural Issues and Coverage Implications*
- Securities Litigation and Enforcement: Recent Developments and Current Trends (January 27, 2022)

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- Rising Risks of Securities Litigation (NACD Webinar) (February 13, 2020) | *Speaker*