

Partner, New York

Executive Compensation and Benefits



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Education

LL.M., New York University School of Law, 2007

J.D., Brooklyn Law School, 2005

B.A., Ohio State University, 2002

Bar Admissions

New York

Publications

"Impact of Compensation-Related Litigation on Public Companies," *Wolters Kluwer's Securities Regulation Daily*, February 14, 2018

"Ineffective Stockholder Approval for Director Equity Awards," *Harvard Law School Forum on Corporate Governance and Financial Regulation*, January 7, 2018

Joe Penko advises public and private companies, private equity firms, executives and boards on executive compensation and employee benefits matters, with a particular emphasis on issues arising in the context of mergers, acquisitions, initial public offerings and other corporate matters.

Mr. Penko regularly advises companies, executive management teams and individual executives with the design, implementation and termination of compensation and benefit arrangements, including executive employment and severance agreements; consulting arrangements; retention, severance and change-in-control plans; cash and equity-based incentive programs; and nonqualified deferred compensation plans.

Mr. Penko also frequently advises clients regarding tax rules relating to deferred compensation, excise tax on excess parachute payments and limits on the deductibility of executive compensation. He also advises on U.S. Securities and Exchange Commission rules governing executive compensation disclosure and corporate governance matters arising in the executive compensation context.

Selected representative experience for Mr. Penko includes:

- E*TRADE Financial Corporation in its \$13 billion acquisition by Morgan Stanley;
- Worldpay in its \$43 billion merger with FIS;
- Ameriprise Financial, Inc. in its \$1.1 billion sale of Ameriprise Auto & Home Insurance Agency Inc. to American Family Insurance Mutual Holding Company;
- Cetera Financial Group in connection with its sale to Genstar Capital, LLC;
- Modular Space Holdings, Inc., the parent holding company of Modular Space Corporation, in its \$1.1 billion acquisition by WillScot Corporation;
- Del Frisco's Restaurant Group, Inc. in its \$325 million all-cash acquisition of Barteca Holdings, LLC;
- Fortive Corporation on the combination of four operating companies from its automation and specialty platform with Altra Industrial Motion Corp. in a \$3 billion transaction;
- The Hershey Company in its \$1.6 billion acquisition of Amplify Snack Brands;
- TPG Capital and its portfolio company The Warranty Group in The Warranty Group's \$2.5 billion business combination with Assurant, Inc.;
- Fortress Investment Group LLC in a variety of matters, including its \$3.3 billion acquisition by SoftBank Group and the sale of Logan Circle Partners to MetLife Inc.;
- NXP Semiconductors N.V. (Netherlands) in its proposed but terminated \$47 billion acquisition by Qualcomm Incorporated;
- Permira Funds on its:
 - acquisition of DiversiTech by a company backed by Permira Funds from an affiliate of The Jordan Company LP; and
 - acquisition of Lyophilization Services of New England, Inc.;
- WellDyne, Inc. in its sale of pharmacy benefit manager WellDyneRx, Inc. to The Carlyle Group;

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- Centene Corporation in its \$6.8 billion acquisition of Health Net, Inc.;
 - Danaher Corporation in a variety of matters, including its \$13.8 billion acquisition of Pall Corporation and its \$2.6 billion combination with NetScout Systems, Inc.;
 - Life Time Fitness, Inc. in its \$4 billion acquisition by Leonard Green & Partners and TPG Capital;
 - New Residential Investment Corp. in its \$1.4 billion acquisition of Home Loan Servicing Solutions, Ltd. and its \$212 million acquisition of Shellpoint Partners LLC;
 - Colony Capital, LLC in its contribution to Colony Financial, Inc. of substantially all of Colony Capital's real estate and investment management businesses and operations;
 - News Corporation in its \$950 million acquisition of Move, Inc.;
 - Twenty-First Century Fox in its proposed, but terminated, \$80 billion acquisition of Time Warner;
 - Cobham plc (UK) in its \$1.46 billion acquisition of Aeroflex Holding Corp.;
 - Moelis & Company in its initial public offering;
 - Brookdale Senior Living Inc. in its \$2.8 billion acquisition of Emeritus Corporation;
 - Intrust Corporation in its initial public offering;
 - ViroPharma Incorporated in its acquisition by Shire plc for \$4.2 billion;
 - XTO Energy Inc. in its \$41 billion stock-for-stock merger with Exxon Mobil Corporation; and
 - UST Inc. in its \$11.7 billion acquisition by Altria Group, Inc.