

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

Recent Publications

"SEC Staff Issues Additional Pay-Versus-Performance Compliance & Disclosure Interpretations," *Skadden, Arps, Slate, Meagher & Flom LLP*, September 29, 2023

"Executive Compensation Due Diligence in M&A Transactions," *Bloomberg Law*, August 2023

"SEC Approves Stock Exchange Rules for Dodd-Frank Clawbacks," *Skadden, Arps, Slate, Meagher & Flom LLP*, June 16, 2023

"NYSE and Nasdaq Postpone Effective Date of Dodd-Frank Clawback Requirements," *Skadden, Arps, Slate, Meagher & Flom LLP*, June 9, 2023

Joe Penko advises public and private companies, private equity firms, real estate investment trusts (REITs), 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 counsels public and private companies, private equity firms, executive management teams and individual executives on 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. Additionally, he counsels clients on a variety of ESG-related matters. Mr. Penko has been selected for inclusion repeatedly in *Chambers USA*.

Mr. Penko has represented a diverse set of clients in a broad range of industries, including:

Public Company and Other Strategic Matters

- Worldpay in its \$43 billion merger with FIS
- E*TRADE Financial Corporation in its \$13 billion acquisition by Morgan Stanley
- American Financial Group, Inc. in the \$3.5 billion sale of its annuity business to Massachusetts Mutual Life Insurance Company
- Banc of California in its pending merger with PacWest Bancorp and its concurrent \$400 million equity raise from Warburg Pincus and Centerbridge
- Flagstar Bancorp, Inc. in its \$2.6 billion all-stock merger with New York Community Bancorp, Inc.
- Danaher Corporation in a variety of matters, including:
 - its \$13.8 billion acquisition of Pall Corporation
 - the \$2.6 billion merger of its communications business with NetScout Systems, Inc.
 - the tax-free spin-off of its specialty industrials business into a separate, publicly traded company called Fortive Corporation
 - its pending \$5.7 billion acquisition of research solutions provider Abcam plc
- Fortive Corporation in:
 - its \$3 billion tax-free spin-off via a reverse Morris trust of four operating companies from its Automation & Specialty platform to Altra Industrial Motion Corp.
 - its tax-free spin-off of Vontier
- the chief executive officer of Radius Global Infrastructure, Inc. in its acquisition by EQT Active Core Infrastructure and Public Sector Pension Investment Board for a total enterprise value of \$3 billion

Joseph M. Penko

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- Jabil Inc. in the pending divestment of its mobility business to BYD Electronic (International) Company Limited for \$2.2 billion
 - Vectrus, Inc. in its \$2.1 billion all-stock merger with Vertex Aerospace Services Holding Corp.
 - Wells Fargo & Company in connection with its \$2.1 billion sale of Wells Fargo Asset Management and related legal entities
 - WSP Global Inc. in its acquisition of the Environment and Infrastructure business of John Wood Group plc for an aggregate cash consideration of \$1.81 billion
 - Rithm Capital Corp. (formerly New Residential Investment Corp.) in its \$1.4 billion acquisition of Home Loan Servicing Solutions, Ltd. and its internalization of management
 - Mars, Incorporated in its \$1.3 billion acquisition of Heska Corporation
 - Moelis & Company in a variety of matters, including its initial public offering
 - Shopify, Inc. in a variety of matters, including the sale of its wholly owned subsidiary, Deliverr, Inc., and the sale of 6 River Systems, LLC
 - Squarespace in a variety of matters, including its direct listing on the New York Stock Exchange
 - NXP Semiconductors N.V. (Netherlands) in its proposed but terminated \$47 billion acquisition by Qualcomm Incorporated
- Private Equity, Financial Sponsor and Related Matters**
- Lionel Messi in his agreement to play for Major League Soccer club Inter Miami CF
 - SVB Securities' management team in its acquisition of SVB Securities, the investment banking business of SVB Financial Group
 - GIC in its:
 - \$15 billion take-private of STORE Capital Corporation (a REIT), alongside Oak Street
 - \$868 million take-private of INDUS Realty Trust, Inc. (a REIT), alongside Centerbridge
 - OceanSound Partners in various transactions, including its:
 - acquisition of a majority stake in: Netrix and the subsequent acquisitions by Netrix of the IT services business unit of Prosum, Inc.; PSC Group, LLC; and BTB Group LLC
 - acquisition of Lynx Software Technologies
 - strategic investment in CFM and CFM's subsequent acquisition of electronic signature and software solutions platform Integrated Media Management, LLC
 - strategic investment in Gannett Fleming
 - Permira Funds in various transactions, including its:
 - \$2.2 billion sale of its portfolio company DiversiTech to Partners Group
 - sale of its portfolio company LSNE to PCI Pharma Services
 - \$4.2 billion sale of a majority stake in Duff & Phelps to Stone Point Capital
 - \$2.4 billion acquisition of Cambrex Corporation
 - acquisition of a majority stake in Axiom
 - acquisition of a majority stake in Reformation
 - acquisition of a majority equity stake in Cielo
 - acquisition of DiversiTech Corporation from The Jordan Company
 - Fortress Investment Group LLC in various matters, including:
 - its pending sale to Fortress management and Mubadala
 - its previous \$3.3 billion take-private by SoftBank (and related CFIUS national security agreement)
 - the internalization of management of Rithm Capital Corp. (formerly New Residential Investment Corp.)
 - Kelso & Company in its acquisitions of:
 - Physicians Endoscopy from Pamlico Capital
 - Refresh Mental Health from Lindsay Goldberg, and in its subsequent sale of Refresh Mental Health to Optum, a division of UnitedHealthcare
 - Plan B One-Step and other brands from Teva Pharmaceuticals
 - seven brands, including Breathe Right Nasal Strips, from GSK Consumer Healthcare

Mr. Penko is actively involved in Skadden's training and recruiting programs and serves on the firm's Summer Associate Committee. He often speaks at seminars and conferences that focus on executive compensation issues and is the author of an ongoing series of articles on *Bloomberg Law* that explore executive compensation considerations arising in M&A transactions.