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PEOPLE MOVES

Greg Baker, Former SEC Senior Counsel, Joins Lowenstein Sandler in New York

By Robin L. Barton, *Hedge Fund Law Report*

H. Gregory Baker, former Senior Counsel in the SEC's Enforcement Division, has joined Lowenstein Sandler's New York office as a partner in the firm's capital markets litigation and white collar criminal defense practices. Given his asset management background, Baker will also advise clients in Lowenstein's investment management practice.

For insights from another Lowenstein partner, see our three-part series on open-source software: "[What Is It, and How Are Fund Managers Using It?](#)" (Feb. 21, 2019); "[What Are the Benefits and Risks of Using It?](#)" (Feb. 28, 2019); and "[How Fund Managers Can Mitigate Its Risks](#)" (Mar. 7, 2019).

As a Senior Counsel in the SEC's Asset Management Unit, Baker gained experience investigating and litigating SEC enforcement matters concerning [hedge fund valuations](#); [private equity fee disclosures](#); [compliance violations](#); [performance advertising](#); [insider trading](#); and accounting violations, among other areas.

For example, Baker brought one of the SEC's first enforcement actions against a robo-adviser, which involved allegations of misleading performance advertisements. See "[SEC Settles First Two Enforcement Actions Against Robo-Advisers](#)" (Feb. 14, 2019).

"The asset management industry is continuing to grow. There are new products and new services being offered, and robo-advisers are an example of that," observed Baker. "The SEC views and treats robo-advisers as investment advisers." Thus, they must ensure they follow the rules, including ensuring that their compliance programs are acceptable. "Just because their business model is different does not mean that the SEC will give them a pass," he added.

To that end, Baker noted that if robo-advisers do not have the means in-house, they should consider working with external compliance consultants early in the process to implement robust compliance programs.

See "[What Robo-Advisers Can Expect From SEC Examinations](#)" (Jun. 21, 2018).

In addition, Baker helped bring the SEC's case against Premium Point Investments and three of its principals. For coverage of that case, see "[Manager Accused of 'Cooking the Books' Facing Civil and Criminal Fraud Charges From SEC and DOJ](#)" (Jul. 12, 2018).

Several of Baker's cases at the SEC involved parallel investigations by other agencies, such as the FBI, the DOJ and the U.S. Postal Inspector Service. "Cases get referred both

ways. Sometimes the SEC refers matters to the DOJ or another agency; sometimes they refer cases to the SEC,” he explained. “From the SEC’s perspective, if there is evidence that suggests serious fraudulent conduct, it tries to get criminal authorities involved as early as possible because they have investigative tools that the SEC does not.”

Entities or individuals that are the targets of parallel investigations should not simply focus on the criminal prosecutors because they pose the greatest risk, warned Baker. “In fact, many times the SEC staff is conducting much of the legwork in terms of collecting information and documents, and the targets need to be part of that process,” he noted. “There is no one way to defend a case, but as a general matter, it is important for an adviser to make sure its counsel has a good rapport with both the regulators and the criminal authorities. You don’t want to get either side upset with you.”

For an example of parallel investigations, see [“Hedge Fund Platinum Partners and Principals Face Civil and Criminal Proceedings From SEC and DOJ Over Alleged Fraudulent Valuation Practices and Liquidity Misrepresentations”](#) (Jan. 12, 2017).

“The best way for fund managers to protect themselves from liability is by having strong compliance programs and [training](#) employees on the risks and their responsibilities,” advised Baker. “Tone at the top is something that the SEC looks at very carefully in any investigation. Whether people at the top are taking compliance seriously usually manifests itself in how compliance is handled throughout the organization.”

See [“SEC Chair Offers Observations on Culture at Fund Managers and the SEC”](#) (Jun. 28, 2018).

Baker added that the number of roles that the chief compliance officer (CCO) plays within a firm is one reflection of that firm’s compliance culture and is a “critically important issue that makes a difference in an organization. Is the CCO just the CCO, or is he or she also the general counsel or the chief operating officer?”

See [“Benefits, Challenges and Recommendations for Persons Simultaneously Serving as General Counsel and Chief Compliance Officer of a Hedge Fund Manager”](#) (May 10, 2012).