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PEOPLE MOVES

Former Soros GC Rejoins WilmerHale in New York

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

WilmerHale announced the return to the firm of Boyd Johnson as a partner in the firm's white collar defense and litigation practices. Johnson will rejoin the firm's New York office after serving as GC for [Soros Fund Management](#).

"WilmerHale's culture is a collaborative one, focusing on solving big problems for clients together. It's satisfying to practice law with lawyers you respect but also ones you care deeply about – and that's WilmerHale for me," said Johnson. "The decision to return was clear once I decided I wanted to practice at a law firm again."

Before his previous seven-year tenure at WilmerHale, Johnson served as the Deputy U.S. Attorney for the Southern District of New York, where he supervised more than 200 Assistant U.S. Attorneys and managed, among other matters, the largest criminal enforcement effort against hedge fund insider trading in history.

See "[Morgan Stanley Sues Former FrontPoint Partners Portfolio Manager Joseph F. 'Chip' Skowron III for Losses Allegedly Caused by Skowron's Insider Trading and Subsequent Cover-Up](#)" (Nov. 21, 2012); and "[On Motion to Set Aside Verdict, Trial Court Upholds All Fourteen Counts of Rajaratnam Insider Trading and Conspiracy Conviction](#)" (Sep. 1, 2011).

In his new position, Johnson will be representing companies, boards of directors and senior executives in investigations, litigation and regulatory enforcement matters. "I will be working with clients across industries but focusing on the financial services space, including banks and broker-dealers, as well as hedge funds, private equity funds and venture capital funds," he added.

In-House Experience

From 2018 to 2020, Johnson served as the global GC for Soros. In that role, he oversaw legal, compliance and regulatory functions and supervised the firm's litigation, employment disputes and regulatory inquiries. He also managed relationships with the SEC; the U.K. Financial Conduct Authority; and the Hong Kong Securities and Futures Commission. In addition, he served as a member of the firm's leadership team, as well as on its valuation; liquidity and risk; and cybersecurity committees.

"It was an honor to serve as GC for Soros, and I'm proud of what we accomplished for the firm and its clients," Johnson said. "I'm now in a position to bring a GC perspective to my counseling of clients and leverage my firsthand experience of what GCs strive to accomplish as both partner to and guardian of the business."

Unless you've been in-house, it's difficult to fully understand the client's daily challenges."

"I was surprised when experienced and talented outside counsel wouldn't spend the time to listen to what we needed to get done," observed Johnson. "Because they had responded to an issue 100 times, they defaulted to their standard playbook – but their playbook didn't necessarily prioritize what we needed to get done." He concluded, "Just because you've done an exercise a number of times for clients doesn't mean the old way suits a particular client at a particular point in time. Understanding that dynamic, I'm going to spend more time listening to clients and directly responding to their needs."

For example, Johnson noted that, as a former GC, he understands how important it is to set a legal budget and stick to it – and how it feels for an in-house lawyer to need to tell the business about a budget overrun. "Also, understanding how GCs communicate with their internal stakeholders is vital to effectively representing them. A GC needs the top-level analysis of an issue and a recommendation, not just a recitation of the options or how challenging the issue is," he added. "My firsthand experience having those conversations will shape the advice I give."

See our three-part series on managing outside counsel: "[How Fund Managers Can Control Legal Costs and Negotiate Outside Counsel Fees](#)" (Oct. 1, 2020); "[Ways to Approach the Process of – and Key Criteria to Consider When – Selecting Outside Counsel](#)" (Oct. 8, 2020); and "[Advice for Allocating Legal Tasks Between In-House Attorneys, Outside Counsel, Consultants and Other Vendors](#)" (Oct. 22, 2020).

When asked about how he, as GC, worked with the CCO at Soros, Johnson noted that they talked multiple times a day about issues as partners. "Effective compliance is a collaborative effort. You always need the buy-in of the business, but if the legal and compliance functions are not coordinated, you're in trouble from the get-go," he remarked. "I have had a lot of discussions with GCs about separating the legal and compliance functions. People have strong views about that. In the end, if a financial institution doesn't have a collaborative culture of compliance, it is headed for failure."

See "[How Compliance and HR Can Work Together](#)" (Mar. 26, 2020).

Pandemic's Effects

Johnson opined that the coronavirus pandemic will result in a renewed focus on the value of IT and cybersecurity. "My sense is that most private funds did well with the remote work environment. That's likely the result of the investments they made in technology before the pandemic," he remarked. "That said, everybody feels like they're one moment away from a data breach. So, the investment in IT and cybersecurity will continue and even increase as we emerge from the pandemic."

See "[Companywide Work From Home: Six Cybersecurity Considerations](#)" (May 7, 2020); and "[Six Ways for Fund Managers to Prepare for the SEC's Focus on Cybersecurity and Resiliency](#)" (Apr. 30, 2020).

"There's also a real question about the value of having a physical office. Fund managers and their investors have appreciated that they can do business without elaborate and expensive office spaces," continued Johnson.

“The need to assess this issue is not particular to the private funds space, but the existing fee pressure from investors will make the analysis more urgent.”

See “[How Compliance Departments Have Responded to the Coronavirus Pandemic](#)” (Sep. 17, 2020).

Trends

The future of the private funds space is bright, Johnson asserted, but it is going to get more competitive and face more regulatory attention, which means it will be harder to be successful.

As for trends, Johnson said that four come to mind. “First, [insider trading risk](#) will remain with us and be a major focus for the SEC; CFTC; DOJ; and foreign regulators in London and across Asia. What’s so challenging is that, in the U.S., there is no statutory clarity on insider trading,” he observed. “If anything, there’s more confusion today than in the past – primarily from the Second Circuit but also from the U.S. Supreme Court – about where the lines are drawn. Prosecutors and regulators have been trying to figure out the full scope of their authority for over a decade.”

“Inside private funds, that uncertainty around insider trading prohibitions makes it challenging for GCs and CCOs to provide clarity to portfolio managers, analysts and traders,” Johnson continued. “Those folks want to know what the rules are and where the lines are – not because they want to cross the lines but because they want to stay within the lines.” He argued that “the time has long been ripe” for an insider trading statute. He noted, however, that the new Congress is unlikely to prioritize that legislative effort given the other challenges facing the country.

See “[Insider Trading Statute and Other Recommendations From the Bharara Task Force](#)” (Mar. 19, 2020).

“Second, there were massive amounts of capital market activity in 2020 – not just IPOs but follow-on offerings, as well as direct listings and special purpose acquisition companies – and I expect that will continue in 2021. Rule 105 of Reg M has always been a key compliance challenge for firms participating in follow-on offerings,” Johnson commented. “There are a number of complicated issues embedded in those deals that will occupy legal and compliance teams in the hedge fund community.”

“Cybersecurity is obviously top of mind for all funds. The virtual environment has been successful, but everyone knows they are one click away from a data breach and the resulting disaster. Anyone who thinks they’re immune from attack is hopelessly naïve or irresponsible,” remarked Johnson. “It’s essential to get cybersecurity issues before the board and ensure everyone is aligned on how to respond to an incident and what investments are going to be made to prevent incidents from happening.” He added, “The board also needs to understand what disclosures the firm is going to make to investors and regulators about those risks.”

See our two-part series “Eleven Lessons From Cyber Hack That Forced an Australian Hedge Fund to Close”: [Part One](#) (Feb. 4, 2021); and [Part Two](#) (Feb. 11, 2021).

Finally, as to culture, Johnson noted that the elimination of [racial](#) and gender discrimination, along with pay equity, are no longer aspirational issues for private funds; they are core compliance and business issues. “Finding ways to address cultural issues – not just

through hiring but also robust internal training and protocols for responding to complaints – is something that investors and regulators really care about,” he observed. “The environmental, social and governance (ESG) manifestation of culture is a material issue for all types of investors. Regulators across the world are also focused on not only the need for ESG disclosures, but also their specificity and accuracy.”

See [“SEC Chair Offers Observations on Culture at Fund Managers and the SEC”](#) (Jun. 28, 2018). See also our four-part series on diversity: [“Why Equal Representation Within Fund Managers Is Essential”](#) (Oct. 4, 2018); [“Ways Fund Managers Can Promote Diversity and Inclusion”](#) (Oct. 11, 2018); [“What Implicit Biases Are and Whether Interventions Are Effective”](#) (Oct. 18, 2018); and [“How Constrained Decision Making, Along With Legal and Compliance Leadership, Can Help Reduce Fund Manager Bias”](#) (Nov. 1, 2018).