Proceedings

A monthly newsletter from McGraw-Hill Education

February 2021 Volume 12, Issue 7

Contents

Dear Professor,

Winter has arrived! Welcome to McGraw-Hill Education's February 2021 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 12, Issue 7 of Proceedings incorporates "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the February 2021 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. The formation of a union at technology giant Google;

2. The United Kingdom's economic separation from the European Union;

3. Recent attempts by the Central Intelligence Agency (CIA) to further diversify its employment ranks;

4. Videos related to a) Janet Yellen's nomination to serve as United States Secretary of the Treasury, and the actual or apparent conflicts of interest she may face if her nomination is confirmed; and b) a recent ruling by a U.K. judge that WikiLeaks founder Julian Assange cannot be extradited to the U.S.;

5. An "ethical dilemma" related to environmental, social and governance (ESG) investing; and

6. "Teaching tips" related to the "ethical dilemma" of the newsletter.

Stay warm and safe, everyone!

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Of Special Interest

This section of the newsletter covers three (3) topics:

1) The formation of an employee union at technology giant Google;

2) The United Kingdom's economic separation from the European Union; and

3) Recent attempts by the Central Intelligence Agency (CIA) to further diversify its employment ranks.

Hot Topics in Business Law

Article 1: "Google Workers Form Union in Latest Show of Discontent with Tech Giant"

https://www.cbsnews.com/news/google-union-alphabet-workers/

Note: In addition to the article, please see the related video included at the above-referenced internet address.

According to the article, several hundred workers at Google parent Alphabet have formed a union, reflecting increasing employee discontent with certain workplace and marketplace practices at the technology giant and a willingness to go a step further after years of petitions and protests.

"We've seen first-hand that Alphabet responds when we act collectively," Nicki Anselmo, program manager, said recently in a statement announcing the formation of the Alphabet Workers Union.

She cited past organizing by Google workers, including an effort that led the company in 2014 to allow Google + users to register for accounts using fake names. "Our new union provides a sustainable structure to ensure that our shared values as Alphabet employees are respected even after the headlines fade," she added.

In recent years, Google employees have also protested a partnership with the Pentagon and Google's large payouts to executives accused of sexual harassment. Most recently, employees have spoken out against the departure of Timnit Gebru, an AI researcher who says she was fired over her work to fight bias.

"Her offense? Conducting research that was critical of large-scale AI models and being critical of existing diversity and inclusion efforts. In response, thousands of our colleagues organized, demanding an explanation," software engineers Parul Koul and Chewy Shaw wrote recently in an editorial in the New York Times.

"For far too long, thousands of us at Google — and other subsidiaries of Alphabet, Google's parent company — have had our workplace concerns dismissed by executives," they stated. "We are joining together — temps, vendors, contractors, and full-time employees — to create a unified worker voice. We want Alphabet to be a company where workers have a meaningful say in decisions that affect us."

The union will have an elected board of directors and paid organizing staff members, with members paying 1% of their total compensation, according to its release. Open to all employees and contractors, the union is being formed with the help of the Communications Workers of America, a labor union representing 700,000 members.

As of Monday, January 4, 2021, 226 Google employees had signed union cards with the CWA, "the first step in winning a recognized bargaining unit under U.S. law," Koul and Shaw stated.

Google said it backs rights for workers, but did not address any of the specific complaints.

"We've always worked hard to create a supportive and rewarding workplace for our workforce. Of course our employees have protected labor rights that we support. But as we've always done, we'll continue engaging directly with all our employees," Kara Silverstein, Google's director of people operations, said in a recent statement.

Alphabet employs more than 130,000 around the globe. Its subsidiaries include Google, YouTube and Waymo.

Digital technology workers are largely not unionized. But there's an effort by Amazon workers to form a union at a warehouse in Alabama, and workers at a few small companies including Glitch and Kickstarter recently formed collective bargaining units.

Discussion Questions

1. Describe what a "recognized bargaining unit" is as referenced in the article.

A recognized bargaining unit is a union that has been certified to represent workers in the collective bargaining process. By federal law, once a union has been certified as the recognized bargaining unit for labor, management must negotiate with the union in good faith.

2. The article indicates that digital technology workers are not typically unionized. Why is that the case?

Typically, digital technology workers are highly skilled, well-educated, and highly compensated. There are at least two reasons why such workers are not typically unionized: a) they are confident in representing themselves and b) most, if not all, of their human resource demands (salary, benefits, working conditions) are already being met.

3. Describe the contentious issue(s) that created a perceived need for unionization at Google. Are you surprised by this? Why or why not?

The issues included in the article that purportedly led to unionization at Google are: a) allowing Google + users to register for accounts using fake names; b) protesting a Google partnership with the Pentagon; c) making large payouts to Google executives accused of sexual harassment; and d) allegedly terminating a Google employee for fighting bias in the workplace. Admittedly, these are not "standard" labor-management issues of contention, but as indicated previously, standard negotiating issues such as salaries and benefits are not really pertinent at Google, since those employment demands are being met due to the highly-educated and highly-skilled nature of Google employees.

Article 2: "New Era for Europe as U.K., E.U. Complete Brexit Separation"

https://www.nbcnews.com/news/world/new-era-europe-u-k-e-u-complete-brexit-separation-n1252642

According to the article, the United Kingdom has finally completed its economic separation from the European Union, embarking on a new era of greater freedom but heightened isolation from its continental neighbors.

While Brexit was officially completed in January 2020, Thursday, December 31, 2020 marked the end of a transition period in which the U.K. followed all the E.U.'s rule and regulations.

As London's Big Ben struck 11 p.m. — midnight Brussels time — the final result of the Brexit process came to pass, to the delight of those who backed Brexit and the dismay of those who continue to fear its consequences.

Prime Minister Boris Johnson, who campaigned for the U.K. to leave the E.U., called the new year "an amazing moment for this country."

"We have our freedom in our hands, and it is up to us to make the most of it," he said in a New Year's video message.

The E.U. is a political and economic club of 27 nations, bound together by shared free trade rules, laws and values. The bloc was partly born from a desire to never repeat the violence of the Second World War.

On June 23, 2016, the British people voted to leave the bloc by 52 to 48 percent. Four years of national drama ensued, as the vote exposed deep divisions across the country that shocked many and are proving difficult to heal.

During last year's transition period, the U.K. kept the same rules as the remaining 27 countries while it tried to negotiate a post-Brexit trade deal with the E.U. After months of what appeared to be deadlocked negotiations, the two sides announced a breakthrough deal last week just days before the December 31 deadline.

Now, Britain has left the European bloc's vast single market and customs union, which allows people, goods and services to flow freely across more than two dozen countries.

The new trade agreement ditches most of the shared rules and regulations but keeps free trade moving between the U.K. and the E.U. It also maintains some cooperation on areas such as security, aviation and science.

But companies face new costs and paperwork, including customs declarations and border checks, and will have to digest the new rules imposed by the trade deal.

Like this year's New Year festivities, celebrations or gatherings to mourn the moment were muted as coronavirus restrictions meant most people stayed at home.

For some, December 31, 2020 will be remembered as the day the U.K. finally threw off the shackles of the Brussels-based bloc. For others, it will be mourned as the day Britain cut itself adrift, a leap into the unknown during a turbulent era as the world battles to control the coronavirus pandemic. But last month's post-Brexit deal and the December 31 final deadline could mean some Britons begin to move on. Whereas some are already campaigning to re-join.

Discussion Questions

1. As the article indicates, the European Union was "partly born from a desire to never repeat the violence of the Second World War." Explain.

The simple, yet important, idea here is that two countries that engage in a trading relationship are much less likely to engage in war with each other.

2. As the article indicates, the British people voted to leave the European Union by 52 to 48 percent. Should the people vote directly on issues of such magnitude? Why or why not?

This is an opinion question, so student responses may vary. In forming the United States, our Founding Fathers debated whether citizens would take enough effort to investigate (i.e., research) issues prior to exercising their right to vote. In your author's opinion, only an informed populace is capable of voting directly on issues of such magnitude.

3. In your reasoned opinion, was Brexit a good idea for the United Kingdom? Why or why not?

This is an opinion question, so student responses may vary. In reality, no one yet knows what the full outcome of Brexit will be.

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Article 3: "CIA's New Recruitment Website Aims to Diversify Spy Agency"

https://abcnews.go.com/Politics/wireStory/cias-recruitment-website-aims-diversify-spy-agency-75036997?cid=clicksource_4380645_2_heads_hero_live_headlines_hed

According to the article, striving to further diversify its ranks, the Central Intelligence Agency (CIA) launched a new website recently to find top-tier candidates who will bring a broader range of life experiences to the nation's premier intelligence agency

The days of all American spies being white male graduates from Ivy League schools are long gone.

The CIA director is a woman and women head all five of the agency's branches, including the directorates of science and technology, operations and digital innovation.

But while the CIA has been diversifying for years, intelligence agencies still lag the federal workforce in minority representation. With thousands of job applicants annually, the CIA wants to do more to ensure its workforce reflects national demographics.

The revamped website has links for browsing CIA jobs complete with starting salaries and requirements, sections on working at the agency, and a streamlined application process.

"We've come a long way since I applied by simply mailing a letter marked 'CIA, Washington, D.C.,'" said CIA Director Gina Haspel, who joined the agency in 1985. She said in a statement that she hopes the new website piques the interest of talented Americans and gives them a sense of the "dynamic environment that awaits them here."

Haspel has made recruitment a priority since she became the first female director in May 2018. Since then, the CIA has started advertising on streaming services, launched an Instagram account and an online "onion site," a feature that makes both the information provider and the person accessing information more difficult to trace.
Last year, the CIA designated its first executive for Hispanic engagement, Ilka Rodriguez-Diaz, a veteran of more than three decades with the agency. She first joined after attending a CIA job fair in New Jersey.

"The CIA had never been on my radar," she wrote in an op-ed in The Miami Herald after getting the job in October. "I didn't think I fit the 'profile.' After all, the spies I saw on TV were male Anglo-Saxon Ivy leaguers, not Latinas from New Jersey. Still, I went to my expert life coach, my mother, for advice. She said, 'No pierdes nada con ir.' (What have you got to lose in going?) So, I went to the job fair. The rest, as they say, is history."

Across the more than a dozen U.S. spy agencies, including the CIA, 61% of intelligence professionals in fiscal 2019 were men compared with 39% women, according to an annual demographics report compiled by the Office of the Director of National Intelligence.

In fiscal 2019, the intelligence community saw an incremental increase in the number of minority professionals — 26.5%, up from 26.2%. But that's still lower than 37 percent in the federal workforce as a whole and 37.4 percent in the civilian labor force, the report said.

The largest minority or ethnic group at all the intelligence agencies, including the CIA, was Black or African American at 12% followed by Hispanic at 7% and Asian at 4%. Persons with disabilities represent 11.5% of the workforce at all the U.S. intelligence agencies — up a point from the year before.

"Even with all the challenges 2020 posed, it was a standout recruitment year for CIA. Our incoming class is the third largest in a decade and represents the most diverse talent pool, including persons with disabilities, since 2010," said CIA spokesperson Nicole de Haay.

A Government Accountability Office (GAO) report to congressional committees in December said the intelligence community as a whole needs to take additional steps to enhance diversity.

"Over the past several years, the intelligence community has demonstrated its commitment to diversity by taking steps to increase the proportion of women, racial or ethnic minorities and persons with disabilities" within the workforce, the report said. "Although some progress has been made in increasing this representation throughout the intelligence community, representation remains below comparable benchmarks."

Discussion Questions

1. Describe Title VII of the Civil Rights Act of 1964.

Title VII of the Civil Rights Act of 1964 is landmark federal legislation that prohibits employment discrimination based on race, gender, national origin, culture, or religion.

2. Does Title VII of the Civil Rights Act of 1964 apply to federal government employees?

Title VII of the Civil Rights Act of 1964 does apply to federal government workers.

3. According to the article, the CIA wants to do more to ensure its workforce reflects national demographics. Explain why it should do so.

The simple answer here is that the CIA should take efforts to further ensure that its workforce reflects national demographics because not only is accommodating diversity legally required, it is also morally and ethically the "right thing" to do.

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Video Suggestions

Video 1: "Janet Yellen Made Millions Giving Speeches to Wall Street Banks She'll Soon Regulate"

https://www.cnn.com/2021/01/04/investing/janet-yellen-wall-street-speeches/index.html

Note: In addition to the video, please see the following article included at the above-referenced internet address:

"Janet Yellen Made Millions Giving Speeches to Wall Street Banks She'll Soon Regulate"

According to the article, Janet Yellen, President-elect Joe Biden's pick for Treasury secretary, made more than $7 million in recent years by giving speeches to Wall Street banks, major corporations and industry groups.

The former chair of the Federal Reserve hauled in nearly $1 million alone in multiple speeches to Citigroup, according to financial disclosure documents filed last week. Since stepping down from the Fed in early 2018, Yellen has also given paid speeches to other companies, including Google, Goldman Sachs, Bank of America and Salesforce.

It is common for former government officials, including Fed leaders, to make money by giving speeches that share their insights on the economy and policy. However, the disclosure of Yellen's lucrative speaking fees is awkward because she could soon be Biden's point person on the economy and finance.

If confirmed as Treasury secretary, Yellen will have enormous sway over everything from taxes and climate to tariffs and government spending. Yellen would also chair a team of U.S. regulators that responds to emerging risks in the financial system.

"This disclosure dovetails with some broader Democratic concerns regarding the revolving door and the access certain financial services firms have to top policymakers," Isaac Boltansky, director of policy research at Compass Point Research & Trading, said in an email.

The fact that the majority of Yellen's speaking fees were from the financial industry could raise concerns that she is too cozy with Wall Street.

Yellen listed $952,200 in income from speeches to Citi, one of the nation's largest banks. She also disclosed speaking fees from PIMCO, Barclays, Citadel, BNP Paribas, UBS, Credit Suisse, ING, Standard Chartered Bank and City National Bank.

"The next Treasury Secretary making millions off of the biggest banks, PE firms, tech companies, etc. raises serious red flags," The Revolving Door Project, a progressive group that tracks conflicts of public officials, wrote on Twitter.

The group called on Yellen to publish "in full" all of her paid speeches -- a disclosure that would explain whether she was "merely opining on the markets, or offering lobbying/policy advice."

Former government officials have been criticized for their post-politics relationships with big banks and corporations.

During the 2016 campaign, then-candidate Donald Trump criticized his opponent, former Secretary of State Hillary Clinton, for making millions off speeches to banks, securities firms and trade associations. The transcripts of some of those speeches were released by WikiLeaks.

The Biden transition team downplayed concerns about Yellen's income from Wall Street and noted that some speeches were moderated or covered by journalists.

"Take a look at her record on enforcement — this is not someone who pulls punches when it comes to bad actors or bad behavior," a Biden transition official said.

Yellen appealed to some progressives in part because of her crackdown on Wells Fargo. In February 2018, the Yellen-led Fed imposed unprecedented growth restrictions on Wells Fargo, penalties the scandal-ridden bank has yet to recover from.

"She didn't hesitate to tell some audience that the rules governing their business should be tougher and more stringent — and it could create problems for the economy otherwise," the Biden transition official said.

However, transcripts of Yellen's speeches to Wall Street banks have not been made public. And the Biden transition official did not immediately provide specific examples of Yellen telling companies that rules may need to be toughened.

In a recent letter to ethics officials, Yellen pledged to take steps to "avoid any actual or apparent conflicts of interest" if she's confirmed to lead the Treasury Department.

Specifically, Yellen promised that no later than 90 days after confirmation she will sell her stakes in several major companies, including Pfizer, Raytheon, DuPont, ConocoPhillips and AT&T.

Additionally, Yellen plans to resign from the Washington Speakers Bureau, which has represented the former Fed chief in paid speeches.

Yellen also wrote that for a period of one year after her last speech she plans to recuse herself from matters related to several companies, including Salesforce, Principal Financial and Japanese investment bank Daiwa Securities. Yellen said she will "not participate personally or substantially in any particular matter" unless she is authorized to.

However, Yellen also signaled she will seek written authorization to participate in matters related to other companies she earned speaking fees from, including Barclays, Citi, Citadel, Credit Suisse and Goldman Sachs.

Analysts said the disclosures are unlikely to derail Yellen's confirmation by the US Senate.

"Yellen will face questions on these speeches during the confirmation process, but it's difficult to envision this disclosure impacting her odds of becoming Treasury Secretary," Boltansky said. "The fact is she did absolutely nothing wrong and she will still cruise to confirmation."

Yellen's forms ran 21 pages and included her stamp collection, which was estimated to be worth between $15,001 and $50,000.

Other former Fed officials have similarly hauled in lucrative speaking fees after leaving the US central bank. For example, Ben Bernanke, who led the Fed through the 2008 financial crisis, made as much as $250,000 per speech at one point. In 2015, Bernanke was hired as a senior adviser to Chicago-headquartered hedge fund firm Citadel — a role he still holds today.

Biden's nomination of Yellen has received widespread support, including from progressive leaders like Senator Elizabeth Warren. Even some Republicans such as Senator Chuck Grassley and Senator John Thune spoke positively about Yellen.

Greg Valliere, chief US policy strategist at AGF Investments, doubts the speaking fees will prevent Yellen from becoming the first woman to lead the US Treasury Department.

"She has such a reservoir of goodwill on Capitol Hill that she will easily win confirmation," Valliere said.

Discussion Questions

1. What is a conflict of interest?

A conflict of interest occurs when a person attempts to represent competing interests simultaneously. For example, an attorney cannot represent simultaneously a plaintiff and a defendant involved in the same case, since that would be a conflict of interest. If an employee with decision-making authority *attempted to make a decision that benefited himself to the detriment of his employer, that would represent a conflict of interest as well.*

2. As the article indicates, Janet Yellen has pledged to take steps to "avoid any actual or apparent conflicts of interest" if she's confirmed to lead the United States Treasury. More specifically, Yellen has promised that no later than 90 days after confirmation she will sell her stakes in several major companies, including Pfizer, Raytheon, DuPont, ConocoPhillips and AT&T. Additionally, Yellen plans to resign from the Washington Speakers Bureau, which has represented the former Fed chief in paid speeches. In your reasoned opinion, are the specified steps, taken as a whole, enough to immunize Yellen from actual or apparent conflicts of interest if she is confirmed as U.S. Treasury Secretary? Why or why not?

As indicated in the article, Janet Yellen has made more than $7 million in recent years by giving speeches to Wall Street banks, major corporations and industry groups. Even if she were to take the steps she has promised to minimize her potential conflicts of interest by selling her stock in several major companies and resigning from the Washington Speakers Bureau, doing so arguably may not completely immunize her from actual or apparent conflicts of interest. She has long-established ties to many major companies and organizations. To act appropriately as U.S. Treasury Secretary (assuming her nomination is confirmed), Mrs. Yellen would have to make a conscious effort to determine whether her decision-making is being inappropriately influenced by her corporate and organizational ties. One final point—It would be difficult to imagine who might be qualified to serve as U.S. Treasury Secretary without having developed previous corporate and organizational relationships!

3. In your reasoned opinion, should Janet Yellen be confirmed to lead the United States Treasury Department? Why or why not? Is it possible to answer this question without being influenced by political ideology or affiliation?

This is an opinion question, so student responses may vary. Unfortunately, as is the case with so many questions involving government, it is admittedly difficult to evaluate an issue without looking through "red or blue lenses."

Video 2: "UK Judge Rules WikiLeaks Founder Julian Assange Can't Be Extradited to U.S."

https://www.huffpost.com/entry/julian-assange-wikileaks-extradition-us_n_5ff2eb26c5b6fd33110f4630

Note: In addition to the video, please see the following article included at the above-referenced internet address:

"UK Judge Rules WikiLeaks Founder Julian Assange Can't Be Extradited to U.S."

According to the article, a British judge has ruled that Julian Assange cannot be extradited to the United States.

Judge Vanessa Baraitser said she had refused his extradition because of fears that he could kill himself.

The U.S. government said it would appeal the decision.

Assange's lawyers had argued the entire prosecution was politically motivated, powered by outgoing President Donald Trump, and that his extradition posed a severe threat to the work of journalists.

At a hearing at London's Old Bailey, Baraitser rejected nearly all the arguments of Assange's legal team, but said she could not extradite him as there was a real risk he would kill himself – and instead ordered his discharge.

"Faced with conditions of near total isolation [...] I am satisfied that the procedures [outlined by U.S. authorities] will not prevent Mr. Assange from finding a way to commit suicide," she said.

Assange wiped his brow after the decision was announced, while his fiancée, Stella Moris, with whom he has two young sons, wept.

She was embraced by Kristinn Hrafnsson, WikiLeaks editor-in-chief, who sat next to her in court as the judgment was delivered.

Assange has been remanded in custody ahead of a bail application that could take place later today. The WikiLeaks founder faces an 18-count indictment, alleging a plot to hack computers and a conspiracy to obtain and disclose national defense information.

The case follows WikiLeaks's publication of hundreds of thousands of leaked documents in 2010 and 2011 relating to the Afghanistan and Iraq wars, as well as diplomatic cables.

Prosecutors say Assange helped U.S. defense analyst Chelsea Manning breach the Espionage Act in unlawfully obtaining material, was complicit in hacking by others, and published classified information that put the lives of U.S. informants in danger.

The 49-year-old denies plotting with Manning to crack an encrypted password on U.S. Department of Defense computers and says there is no evidence anyone's safety was put at risk.

Assange's lawyers have said he faces up to 175 years in jail if convicted, although the U.S. government said the sentence was more likely to be between four and six years.

Discussion Questions

1. What is extradition?

Extradition occurs when one jurisdiction delivers a person accused or convicted of committing a crime in another jurisdiction over to their law enforcement. It is a cooperative law enforcement process between the two jurisdictions and depends on the arrangements made between the two jurisdictions.

2. In your reasoned opinion, in deciding whether to grant extradition of a defendant to another country, should the sitting judge take into consideration the likely impact refusal of extradition would have on relations between the two countries involved? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, the likely impact refusal of extradition would have on relations between the two countries involved should be one of many issues to consider when deciding whether to grant extradition of a defendant to another country.

3. As indicated in the article, Judge Vanessa Baraitser said she had refused Julian Assange's extradition to the United States because of fears that he could kill himself. In your reasoned opinion, is this a legitimate reason to refuse extradition? Why or why not?

This is an opinion question, so student responses may vary. Although some students may argue that this should not be a reason to refuse extradition, ask them whether justice would truly be served if the defendant commits suicide and is therefore no longer available for trial, conviction and punishment.

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This section of the newsletter addresses the issue of environmental, social and governance (ESG) investing.

Ethical Dilemma

"Why Socially Responsible Investing Is Likely to Gain Momentum under Biden"

https://www.forbes.com/sites/jasonbisnoff/2020/12/14/esg-investing-a-sizzling-sector-that-will-get-even--hotter-under-president-biden/?sh=778f9f323302

According to the article, in the months leading up to the presidential election in 2016, socially responsible investing was gaining popularity on Wall Street. In February 2016 Larry Fink, CEO of the world's largest asset manager, $7 trillion BlackRock wrote an open letter to global CEOs: "Generating sustainable returns over time requires a sharper focus not only on governance, but also on environmental and social factors facing companies...BlackRock has been undertaking a multi-year effort to integrate ESG considerations into our investment processes, and we expect companies to have strategies to manage these issues."

But when Donald Trump surprised the world with his presidential victory in November 2016, proponents of environmental, social and governance (ESG) investing had reason to be worried.

"There was a lot of concern about the administration hurting flows by enacting barriers and regulations that work against our goals when investing around climate change and social justice," says Justina Lai, chief impact officer at San Francisco-based Wetherby Asset Management. "The perpetual urgency around these issues was only exacerbated by the pandemic and murder of George Floyd. With the Trump administration came four years of missed opportunities at additional progress that could have been made without an obstructionist government."

Trump, on the other hand, was clear about his goal of reversing many of the Obama-era changes that favored the environment and corporate regulations. Four years later, Trump's rhetoric and regulatory changes have been unable to derail the socially conscious investing locomotive.

"The reality is we've had more growth over the last four years than we did over the previous 12 years. After the 2016 election, people said that if the government isn't going to work on these issues, we're going to have to do it for ourselves," Peter Krull, founder, CEO and director of investments at Asheville, North Carolina-based Earth Equity Advisors says. "If the last four years of growth were with headwinds, I'm really excited about seeing a tailwind."

"In a lot of ways, the concerns around the new administration ended up rallying municipal, state and local governments as well as the private sector," Lai adds. "Other parts of the economy rose to the occasion."

According to the latest biennial report from the United States Forum for Sustainable and Responsible Investment (US SIF) total US-domiciled assets under management employing ESG investing strategies increased 42 percent over the past two years, to $17 trillion in 2020 up from $12 trillion at the start of 2018. The figure represents 33% of all US assets under professional management, meaning that one in three investing dollars is invested in this manner.

While President-Elect Biden begins to unravel some of the actions of his predecessor, he won't need to do much to encourage continued growth in ESG investing. Most companies are already enlightened to the fact that being environmentally friendly and socially responsible is good not only for customers and stakeholders, but also for shareholders. As a sector, ESG has generally outperformed and proven it can amass assets despite headwinds.

The Brown Advisory Sustainable Growth Fund, which has $4.4 billion in assets, has attracted net flows of more than $2.6 billion and produced a total return of more than 152% over the past five years, far outpacing the 101% return of the Russell 1000 index of large cap companies over the same time span. Clean energy-oriented ETFs have done even better. Invesco WilderHill Clean Energy ETF has gained more than 170% this year alone. Net inflows to ESG ETFs were $32 billion in the first 11 months of 2020, triple the rate for 2019, according to CFRA Research.

Things are likely to get better under a Biden administration. Already his cabinet choices have ESG proponents cheering. John Kerry, a known ally of tree-huggers, is his choice as special presidential envoy for climate. The former chair of the Federal Reserve and founding member of the Climate Leadership Council, Janet Yellen has been nominated to serve as Treasury Secretary. Additionally, former BlackRock global head of sustainable investing Brian Deese has been tapped for director of the president-elect's National Economic Council.

His choices for regulators also look to be ESG-friendly. Current SEC commissioner Allison Herren Lee is being discussed as a likely candidate to serve as the acting chair of the commission under Biden and possibly to take the post permanently. Lee has made ESG and climate change central to her agenda in her time in public service.

Michigan Representative Andy Levin is among the names being considered to run the Department of Labor. Levin has proposed a pair of bills in the House of Representatives requiring advisors to incorporate socially responsible investing in their retirement strategies. These bills would amend the Investment Advisers Act and the Employee Retirement Income Security Act (ERISA) to obligate advisors to use ESG in retirement savings. There will also be pressure from advocates for the administration to mandate public companies disclose climate financial risks as well as to further regulate investments that are designated ESG.

"One thing that the Biden administration has communicated is their intention to require public companies to disclose more climate change-related financial risk information and emissions data from an operational perspective," director of sustainable investing at Northern Trust Asset Management Emily Lawrence says. "The growth in higher quality data certainly will allow us to continue to make more informed decisions."

Asset managers are also likely to come under more scrutiny. In November, Morningstar unveiled a rating that scores portfolio managers and funds on ESG commitment.

During what would become Trump's final year in office, the DOL and SEC proposed a series of rules detrimental to ESG investing. One proposal would hinder ESG consideration in retirement accounts on the basis of fiduciary duty.

While the initial proposal threatened the momentum of ESG investing, the final rule was dialed down with the removal of the term ESG. Early in his administration, Biden and the new Congress could seek to undo the rule using the Congressional Review Act but experts say he is more likely to take the easier action of adjusting it.

"Plan administrators are pretty conservative so this could have a chilling effect on the addition of ESG options in 401k plans, but I think a Biden administration will seek to roll it back in some way, through another rule or through guidance," says Jon Hale head of Morningstar's sustainability research.

Biden may instead look to target 2020 regulations that focus on proxy voting, restricting non-economic initiatives taken by institutional shareholders to push for further ESG initiatives.

These changes could cause damage to an important tool in the ESG belt. The US SIF report showed that from 2018 through the first half of 2020, 149 institutional investors and 56 investment managers controlling $1.98 trillion in assets, led or co-led shareholder resolutions on ESG issues.

"Over the last couple of years, the Trump administration brought a number of policies that made responsible investment more difficult and we hope that we can reverse some of those policies and move ahead," Fiona Reynolds, CEO of the United Nations Principles for Responsible Investment says. "I've never felt more certain about the future for sustainability than I do at the moment."

Discussion Questions

1. What is environmental, social and governance (ESG) investing?

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Environmental, social and governance (ESG) investing is a business philosophy that is closely aligned with the socioeconomic view of social responsibility. The idea here is that as a corporate citizen, business has a greater responsibility than merely generating a profit—It should also consider the effects of its decision-making on its stakeholders—including not merely shareholders, but employees, customers, suppliers, and the community-at-large.

2. As the article indicates, total United States-domiciled assets under management employing ESG investing strategies increased 42 percent over the past two years, to $17 trillion in 2020 up from $12 trillion at the start of 2018. The figure represents 33% of all US assets under professional management, meaning that one in three investing dollars is invested in this manner. Are you surprised by these statistics? Why or why not?

This is a question that seeks a subjective interpretation, so student responses may vary. Your author was admittedly surprised that approximately one-third (33%) of all United States assets under professional management employ ESG investing strategies. This seems to be a clear indication by investment advisors that acting in a socially responsible way is in the long-term best interests of corporations in terms of business success.

3. According to the "economic model" of social responsibility, aside from compliance with the law, corporations have only one responsibility: generating a profit for shareholders. According to the "socioeconomic model" of social responsibility, corporations have a greater obligation than mere legal compliance and profit generation; namely, maximizing the interests of stakeholders, which include not only stockholders, but also other parties such as employees, customers, and the community at large. In your reasoned opinion, which is the better view of social responsibility? Explain your response.

This is an opinion question, so student responses may vary. As indicated in response to Ethical Dilemma Discussion Question Number 2 above, a growing number of investment advisors apparently believe that acting in a socially responsible way is in the long-term best interests of corporations in terms of business success.

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Of Special Interest

This section of the newsletter will assist you in addressing the Ethical Dilemma ("Why Socially Responsible Investing Is Likely to Gain Momentum under Biden") of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to the Ethical Dilemma— "Why Socially Responsible Investing Is Likely to Gain Momentum under Biden"):

For an excellent article regarding the history of socially responsible investing, please refer to the following:

"The Origins of Socially Responsible Investing"

https://www.thebalance.com/a-short-history-of-socially-responsible-investing-3025578

If you have not heard of corporate social responsibility (CSR) before, you're not alone. While It is not a new concept, it is an idea many people haven't. This concept stems from the belief that businesses and corporations should act responsibly in the communities and environments they operate in.

Taking action to protect the environment and promote human rights and equal employment opportunities are some examples of corporate social responsibility. Businesses can also act to promote educational opportunities, or women's and minority rights as socially responsible actions.

Socially responsible investing (SRI) is an investing interest strategy in which investors develop strategies and standards to invest only in businesses that strive to abide by acceptable social values.

The Roots of Socially Responsible Investing

Socially responsible investing in the U.S. is believed by some to have roots that date back more than 200 years ago to the money management practices of the Methodists. Others suggest this practice goes back to the ideas long championed in Jewish investing.

John Wesley, the founder of the Methodist movement, urged his followers to shun profiting at the expense of their neighbors. Consequently, they avoided partnering or investing with those who earned their money through alcohol, tobacco, weapons, or gambling (sometimes referred to as sin stocks). These actions essentially established social investment screens.

Religious beliefs are a common theme in the origins of socially responsible investing. Shariah—or Shari'a—compliant investing also goes back hundreds of years, following the principles of Islamic finance. Shariah-compliant investing avoids investments that are related to activities prohibited by Islam.

Regardless of the origins of SRI, it wasn't until the sixties that socially responsible investing vaulted forward as an investing discipline in the U.S.

The '60s

Dissatisfaction among students and other young people led to protests against the Vietnam War and the boycott of companies that provide weapons used in the war. Meanwhile, civil rights and racial equality rose in prominence.

Community development banks that were established in low-income or minority communities were part of a movement that produced the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

The '70s

During the seventies, social activism spread to labor-management issues at corporations, while protection of the environment also became a consideration for more investors. The first Earth Day was celebrated in 1970. As the decade wore on, concerns that many activists had over the threat of pollution from nuclear power plants were heightened with the accident at the Three Mile Island nuclear power plant.

In the U.S. at this time, remaining sentiments about war, emerging environmental issues, and racial inequalities influenced socially responsible investing along with religious beliefs.

A significant breakthrough for socially responsible investing occurred in 1970, when Ralph Nader—a consumer advocate, environmentalist, and later independent candidate for president of the United States—succeeded in getting two socially based resolutions on the annual meeting proxy ballot of General Motors, the country's largest employer at the time.

Although both votes failed, it was the first time that the federal Securities Exchange Commission permitted social-responsibility issues to appear on a proxy ballot.

The '80s

Progress continued for SRI during the eighties, most notably through the effort to end the racist system of apartheid in South Africa. Individual and institutional investors pulled their money away from companies with operations in South Africa.

The investment decisions of churches, universities, cities, and states moved many U.S. corporations to divest themselves of their South African operations. That led to economic instability within South Africa and contributed to the eventual collapse of apartheid.

International human rights and the treatment of workers were added to the list of concerns for U.S. investors.

The early 1980s were also a time when several mutual funds were founded to cater to the concerns of socially responsible investors. These funds applied positive and negative screens—or filters—to their stock selections. Some funds that did so were the Calvert Social Investment Fund Balanced Portfolio and the Parnassus Fund.

The filters included the basic concerns of the Methodists—weapons, alcohol, tobacco, and gambling—but also more modern issues, such as nuclear energy, environmental pollution, the treatment of workers.

The '90s

By 1990 there had been sufficient proliferation of SRI mutual funds and growth in popularity as an investing approach, to warrant an index to measure performance. The Domini Social Index, made up of 400 primarily large-capitalization U.S. corporations, comparable to the S&P 500, was launched in 1990.

The companies were selected based on a wide range of social and environmental criteria and provided investors with a benchmark to measure the performance of screened investments versus their unscreened counterparts.

Over time, the Domini Social Index would help to disprove the argument that investors were settling for lower returns by limiting the companies they could include in their portfolios.

The activism that led to the identification of specific screens and the engagement of dialogue with companies with questionable corporate behavior also propelled the growth of community investment, another major element of socially responsible investing. Support for community development financial institutions (CDFIs) grew during the 1960s as a way to address racial inequality.

Activists argued that there was a positive social impact by investing in CDFIs, which in turn would inject that money into small businesses and housing programs in low-income communities. Loans were made to poor people, who paid them back with a rate of interest, providing a return for investors beyond knowing their money was used in a socially positive way.

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Present Day Responsible Investing

Fast forward to the present day, there has been an acceleration of positive approaches to sustainability challenges being embraced by socially responsible investors. Such modern approaches include impact investing, and the mainstreaming of sustainable investing, which continues to evolve.

With social issues continuing to manifest—some recent additions are income and wealth inequality, climate change, pollution, and corruption (to name only a few), you can expect corporations and businesses to continue to address their impact on social issues, and strengthen their stances going forward. As sustainability and corporate social responsibility strategies continue to add perceived consumer and investor value to companies, more investments will be designed with these concerns in mind.

Teaching Tip 2 (Related to the Ethical Dilemma— "Why Socially Responsible Investing Is Likely to Gain Momentum under Biden"):

For an excellent article regarding the essentials of sustainable investing, please refer to the following:

"Sustainable Investing Basics"

https://www.ussif.org/sribasics

What is sustainable investing?

Sustainable investing is an investment discipline that considers environmental, social and corporate governance (ESG) criteria to generate long-term competitive financial returns and positive societal impact. Examples of ESG criteria can be found **here**.

Sustainable Investment Assets in the United States: According to the US SIF Foundation's 2020 *Report on US Sustainable and Impact Investing Trends,* as of year-end 2019, one out of every three dollars under professional management in the United States—$17.1 trillion—was managed according to sustainable investing strategies.

Motivations: There are several motivations for sustainable investing, including personal values and goals, institutional mission, and the demands of clients, constituents or plan participants. Sustainable investors aim for strong financial performance, but also believe that these investments should be used to contribute to advancements in social, environmental and governance practices. They may actively seek out investments—such as community development loan funds or clean tech portfolios—that are likely to provide important societal or environmental benefits. Some investors embrace sustainable investing strategies to manage risk and fulfill fiduciary duties; they review ESG criteria to assess the quality of management and the likely resilience of their portfolio companies in dealing with future challenges. Some are seeking financial outperformance over the long term; a growing body of academic research shows a strong link between ESG and financial performance.

Terminology: Just as there is no single approach to sustainable investing, there is no single term to describe it. Depending on their emphasis, investors use such labels as: “community investing,” “ethical investing,” “green investing,” “impact investing,” “mission-related investing,” “responsible investing,” “socially responsible investing,” and “values-based investing,” among others.

What strategies do sustainable investors use?

Traditionally, sustainable investors have focused on one or both of two strategies. The first is ESG incorporation, the consideration of environmental, community, other societal and corporate governance (ESG) criteria in investment analysis and portfolio construction across a range of asset classes. An important segment, community investing, seeks explicitly to finance projects or institutions that will serve poor and underserved communities in the United States and overseas. The second strategy, for those with shares in publicly traded companies, is filing shareholder resolutions and practicing other forms of shareholder engagement. Sustainable investing strategies work together to encourage responsible business practices and to allocate capital for social and environmental benefit across the economy.

How large is the sustainable investing marketplace?

The US SIF Foundation's *Report on US Sustainable and Impact Investing Trends* identified $17.1 trillion in total assets under management at the end of 2019 using one or more sustainable investing strategies, a 42 percent increase from the $12.0 trillion identified two years prior. This represents 33 percent, or one in three dollars, of the $51.4 trillion in total US assets under professional management tracked by Cerulli Associates.

Who are sustainable investors?

Sustainable investors comprise individuals, including average retail investors to very high net worth individuals and family offices, as well as institutions, such as universities, foundations, pension funds, nonprofit organizations and religious institutions. There are hundreds of investment management firms that offer sustainable investment funds and vehicles for these investors.

Practitioners of sustainable investing can be found throughout the United States. Examples include:

- Individuals who invest—as part of their savings or retirement plans—in mutual funds that specialize in seeking companies with good labor and environmental practices.
- Credit unions and community development banks that have a specific mission of serving low- and middle-income communities.
- Hospitals and medical schools that refuse to invest in tobacco companies.
- Foundations that support community development loan funds and other high social impact investments in line with their missions.
- Religious institutions that file shareholder resolutions to urge companies in their portfolios to meet strong ethical and governance standards.

- Venture capitalists that identify and develop companies that produce environmental services, create jobs in low-income communities or provide other societal benefits.
- Responsible property funds that help develop or retrofit residential and commercial buildings to high energy efficiency standards.
- Public pension plan officials who have encouraged companies in which they invest to reduce their greenhouse gas emissions and to factor climate change into their strategic planning.

How fast are segments of sustainable investing growing?

Registered Investment Companies: Hundreds of registered investment companies, which consist of mutual funds, variable annuity funds, ETFs and closed-end funds, consider ESG criteria in making investment decisions. The US SIF Foundation identified 836 registered investment companies with ESG assets in 2020, including 718 mutual funds and 94 ETFs. In 2020, the ESG assets managed by registered investment companies totaled $3.10 trillion, up 19 percent from $2.61 trillion in 2018.

Alternative Investment Funds: The number and assets of alternative investment funds that consider ESG criteria showed strong growth from 2018 to 2020. In 2020, the US SIF Foundation identified 905 alternative funds, including private equity and venture capital funds, hedge funds, and real estate investment trusts (REITs) or other property funds, that considered ESG criteria, compared with 780 in 2018. In 2020, the assets managed by these funds totaled $716 billion, up 22 percent from the $588 billion held by the alternative funds identified in 2018 using ESG criteria.

Community Investments: The community investing sector, which includes community development banks, credit unions, loan and venture funds, has experienced rapid growth over the last decade. Community investing assets nearly doubled between 2014 and 2016, then increased by just over 50 percent between 2016 and 2018, and most recently grew by 44 percent between 2018 and 2020 to $266 billion. Community development credit unions constitute the largest group of community investing institutions, in asset-weighted terms.

How do sustainable investment funds perform?

Sustainable investing spans a wide and growing range of products and asset classes, embracing not only public equity investments (stocks), but also cash, fixed income and alternative investments, such as private equity, venture capital and real estate. Sustainable investors, like conventional investors, seek a competitive financial return on their investments.

A number of studies have found that that investors do not have to pay more to align their investments with their values, or to avoid companies with poor environmental, social or governance practices. Studies with such findings have come from Oxford University, the Global Impact Investing Network, the Morgan Stanley Institute for Sustainable Investing, Nuveen TIAA Investments and Deutsche Asset & Wealth Management, among others. For example, in a study by the Morgan Stanley Institute for Sustainable Investing of ESG-focused mutual funds and ETFs, it found that there is "no financial trade-off in the returns of sustainable funds compared to traditional funds, and they demonstrate lower downside risk." Moreover, during a period of extreme volatility, the study found "strong statistical evidence that sustainable funds are more stable."

What is Shareholder Engagement?

Owning shares in a company gives investors a channel through which to raise environmental, social and corporate governance issues of concern. By filing or co-filing advisory shareholder resolutions at US companies, which may proceed to a vote by all shareholders in the company, active shareholders bring important issues to the attention of company management, often winning media attention and educating the public. Moreover, resolutions need not come to a vote to be effective. The process of filing often prompts productive discussion and agreements between the filers and management that enable the filers to withdraw their resolutions.

From 2018 through the first half of 2020, 149 institutional investors and 56 investment managers collectively controlling $1.98 trillion in assets at the start of 2020 led or co-led shareholder resolutions on ESG issues. Investors filed more than 750 resolutions relating to environmental, social and governance issues for the 2020 proxy season. The leading issue raised in shareholder proposals, based on the number of proposals filed from 2018 through 2020, was disclosure and management of corporate political spending and lobbying. Shareholders filed 270 proposals on this subject during this period. Many of the targets were companies that have supported trade organizations that oppose regulations to curb greenhouse gas emissions. Investors are also focusing attention on ending de facto workplace discrimination on the basis of ethnicity and sex - they filed a total of 228 proposals on these and related fair labor issues. Recent ESG resolutions have also addressed climate change, executive pay, human rights and board diversity.

In addition to filing or co-filing shareholder resolutions, investors can also actively vote their proxies, engage in dialogue with corporate management or join shareholder coalitions as a means to encourage companies to improve their environmental, social and corporate governance practices. In addition, investors can participate in public policy initiatives, working with government regulatory agencies, and testify and report on ESG investment issues to Congress.

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Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	**Video Suggestions**	**Ethical Dilemma**	**Teaching Tips**
Barnes et al., Law for Business	Chapter 25	Chapters 3 and 5	Chapter 3	Chapter 3
Bennett-Alexander & Hartman, Employment Law for Business	Chapters 3 and 15	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 42 and 43	Chapters 2, 6 and 7	Chapter 2	Chapter 2
Kubasek et al., Dynamic Business Law: The Essentials	Chapter 24	Chapters 2 and 6	Chapter 2	Chapter 2
Liuzzo, Essentials of Business Law	Chapters 32, 33 and 36	Chapters 2 and 3	Chapter 2	Chapter 2
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapter 51	Chapters 2 and 4	Chapters 4	Chapter 4
McAdams et al., Law, Business & Society	Chapters 13, 14 and 16	Chapters 2, 4 and 16	Chapter 2	Chapter 2
Melvin, et al., Business Law and Strategy	Chapters 40 and 41	Chapters 2 and 45	Chapter 2	Chapter 2
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 11, 12 and 25	Chapters 5, 22 and 25	Chapter 5	Chapter 5
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 12, 20 and 22	Chapters 2 and 13	Chapter 2	Chapter 2
Sukys, Business Law with UCC Applications	Chapters 23, 24 and 34	Chapters 1 and 5	Chapter 1	Chapter 1

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This Newsletter Supports the Following Business Law Texts:

Barnes et al., Law for Business, 14th Edition ©2021 (1260354660)

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Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition ©2019 (1260118827)

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