

INSIGHTS

Welcome to the Bracewell Sidebar

June 10, 2021

By: [Joshua C. Zive](#) and [Matthew G. Nielsen](#)

Welcome to The Bracewell Sidebar! In this episode, [Josh Zive](#), a senior principal in Bracewell's Policy Resolution Group and the founder of [The Lobby Shop podcast](#), talks with Phil and Matthew about the podcast's origins and some of the topics it will explore, such as environment, social and governance (ESG).

There's a new administration with new people in leadership positions at the Department of Justice, at the SEC and at other regulators that touch lots of different businesses. Explain to me why those positions and the changes that are meaningful.

They're representatives of the administration. They're there to carry out the policies and viewpoints of the Biden administration. We can get into what we expect out of both of those agencies and others, but the bottom line is we expect there to be increased enforcement activity, which is usually consistent with a Democratic administration.

If you look at some of what Attorney General Garland said during his confirmation process, he listed all sorts of things that are just mirror things that President Biden and Vice President Harris and others on their teams have been saying for months. Things like civil rights, the environment, corruption, COVID, corruption and PPP fraud. Some of these things did get attention over the last 18 months or so, but I think you can count on them getting more attention.

What is The Bracewell Sidebar? Why did you start this podcast?

One of the things that really jumped out for us over the last few months is that we've been getting lots of questions about having a dramatic change in the world of what's going on in DC in terms of prosecutions and investigations and enforcement. Is it predictable? Is it going to move slowly? Is, all of a sudden, anyone who's involved in the financial services industry or who is doing business abroad going to be investigated constantly, or are things going to more or less be the same? Four years ago — and for almost the entirety of the eight-year administration prior to four years ago — the SEC employed a practice that it referred to as "broken windows" which involved more minutiae-based, technical, regulatory inquiries and investigations about small things. And then that went away. So, now things have changed, and there's a new administration with new people in leadership positions at the Department of Justice, at the SEC and at other regulators that touch lots of different businesses. And the question is "Now what?"

Why don't we touch on what you think some of the major issues are that are going to be driving both Sidebar and this administration over the next few months.

One of the things that I know we're going to talk about in the weeks ahead that's gotten a lot of attention recently is ESG, or environmental, social and governance. That's something that the SEC is talking about a lot and has put together a dedicated task force to focus on that, I think the SEC's view takes two perspectives. One, it's how public companies disclose their approach to ESG issues because companies are now disclosing more and more about ESG for various reasons. And separately, what sort of investment advisors financial services firms are doing with respect to investment decisions in ESG entities. One of the things that has emerged over the last year or so is major institutional investors — totally separate from any government requirement or expectation — are saying that they want to dedicate certain amounts of their funds or withhold certain funds from potential investment targets based on those companies, not strictly because of financial performance metrics but because of other things that the companies do.

What are you keeping an eye on in the world of government investigations?

ESG is a fascinating area. It's the first time where I think I've done compliance work for a company that was really pushed by the shareholders. That's why clients have come and they're updating their policies on these issues, especially social issues which you know aren't normally what we would see in the compliance world.

If I'm a company, why should I listen to ESG concerns?

Because it is a developing area. The SEC is trying to figure out, for instance, how do we make companies disclose things that are outside of financial performance. They need to disclose the impact of climate change on their financials.

Want to learn more about ESG or any of the topics discussed on this podcast? Email [Matthew Nielsen](mailto:Matthew.Nielsen@bracewell.com).

The opinions expressed in these podcast are those of the speakers and do not necessarily reflect the viewpoint of their institutions or clients.