Asset Management US Inc.

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What Could America's New Presidency Mean for Responsible Investment?

On November 7, 2020, Joe Biden was declared the next president of the United States, with senator Kamala Harris as his Vice President. The two have not yet been inaugurated, that will happen on January 20th, but already there has been much speculation about Biden's policy priorities. During the campaign, Biden drew sharp distinctions between himself and Trump. He promised he would "bring America back" to a more consensus-oriented, professional, institutional kind of politics, with more initiative taken by the government, but he faces obstacles. Despite recent wins in Congress, his party has slim majorities and recent violence at the Capitol leaves the question of division and political instability.

> **While there is no guarantee** that Biden can accomplish any given item on his agenda, his presidency, together with the Democratic legislative majority, promises to be a historic shift for the country, one that will affect responsible and sustainable investors

ESG assets in the US have already been growing rapidly, 42% from 2018 to 2020, with $17.1 trillion in assets, or one out of three dollars, being managed with ESG criteria in 2020. Biden's election comes on top of that already-astonishing growth for the sector and he is seen as more supportive of sustainable investing than Trump. The administration will prioritize returning to Obama-era regulations on a range of issues. New regulations and corporate tax hikes may raise costs for businesses, create pushback or stall projects in the energy sector. From the viewpoint of sustainable investment, these regulations will also push the private sector to improve practice on sustainability issues and increase disclosures, which will strengthen the conditions for effective long-term responsible investing.

Biden's approach to **climate policy, social and labor protections, and financial regulations** will incentivize investing in companies that are prepared for a more dynamic regulatory environment on sustainability issues.

> **For APG,** Biden's approach may mean greater opportunities for SDI's and investing in the energy transition, improved data on ESG performance, and better sustainability performance for our portfolio.

Rollback of the rollbacks

We expect Biden to attempt an across-the--board campaign reversing Trump administration policy, which was often geared towards reversing, or rolling back, Obama-era regulations—hence a 'rollback of the rollbacks.'

Biden wants to immediately, by executive order, reverse 100 of Trump's rollbacks of "public health and environmental rules." Other changes may take time, as Biden slowly fills agency positions and states litigate rule-changes.

While new legislation remains hard to predict even with a democratic majority, that majority will enable Biden to smoothly appoint his chosen officials, making agency actions a more certain bet.

Climate takes center stage

Biden has made clear that he aims to make climate change a major priority of his presidency, saying that there is "no greater challenge" facing the country and the world. His campaign website promises to set the U.S. on a path for 100% renewable energy and net-zero emissions by 2050. With the Democratic majorities in Congress, Biden might also contemplate a national energy standard and further increases in government spending to go along with his executive proposals.

Prominent climate policy proposals include:

1) large (~$2 trillion) federal investments in climate initiatives

2) ending Trump-era tax cuts and subsidies for oil and gas

3) aggressive appliance and building efficiency standards

4) a re-energized EPA that pursues criminal anti-pollution cases

5) strengthening emissions and fuel efficiency standards

Sectors are shifting on climate

These proposals could affect the sustainability profile of companies in large-scale infrastructure development, where the Environmental Protection Agency (EPA) oversees permitting. Transportation industries may be affected by updated emissions regulations and electric vehicle infrastructure. The energy sector will face growing costs for oil & gas. Meanwhile agriculture may be affected as Biden pushes biofuels, methane digesters and **innovations** in soil conservation techniques.

Biden has also emphasized the need for the United States to engage globally on climate change and rejoin the Paris Accords. International agreements and standards might change the tone and level of urgency for multinational corporations.

Green Investment Opportunities

APG can explore new investment opportunities in growing sectors. Electric vehicles may experience a boost with tax incentives and charging infrastructure, clean energy will benefit from emissions regulations, and green bonds could stand to grow with large federal infrastructure investments.

> New regulations and investments under Biden could incentivize companies to be innovative and get ahead of sustainability issues.

Climate priority clues in Biden appointees

1. *International (re)alignment*: **Gina McCarthy**, former head of Obama's EPA, will be Biden's head of White House Domestic Climate Policy. She might prioritize a piece of hydro-fluorocarbon legislation called the Kigali amendment, that involves the US rejoining international agreements.

2. *Stronger environmental assessment*: **Brenda Mallory**, appointed to head the Environmental Quality Council, has expressed interest in a strong NEPA (National Environmental Policy Act), which would affect the permitting process for many projects.

3. *Electric vehicles:* **Jennifer Granholm**, the former governor of Michigan (Detroit), has been named Energy Secretary, signaling an interest in the auto sector. Biden wants to prioritize electric vehicles, with federal procurement dollars for EVs, tightened emissions standards, 500,000 new charging stations by 2030 and a restored electric vehicle tax credit.

4. *ESG focus*: The appointment of **Brian Deese** to lead the National Economic Council might mean steps forward for sustainable investment policy. Brian is currently the head of sustainable investing at Blackrock, prior to which he was in the Obama Administration, where he helped negotiate the Paris Climate Agreement.

Employment and Society: Raising the Bar

Biden has taken care to emphasize his loyalty to labor unions ("I'm a union guy") and his campaign website promises pro-labor policies. Under him federal government agencies like the Department of Labor (DOL), the National Labor Relations Board (NLRB), and the Equal Employment Opportunity Commission (EEOC), are likely to pursue some moderately pro-union policies. This could mean repealing the 2018 executive orders by Trump aimed at collective bargaining among federal employees, which made it easier to fire union workers and limit the topics that could be discussed in negotiations. Or it could mean promoting the Protecting the Right to Organize (PRO) Act, an amendment to the National Labor Relations Act which includes changes to the rules for union election and liability for employers who obstruct organization efforts. While the PRO Act is still in Congress, Biden could push for measures to be implemented at the NLRB, or other agencies, for example, giving them more power of oversight.

Other issues Biden has mentioned, like paid sick leave, expanded health care access and raising minimum wage may depend on getting enough votes in Congress to pass —more likely with the new Democratic majority in the Senate, but not guaranteed.

Social Justice

Biden has also taken positions on social justice. He proposed ending private prisons and profiteering from prisoners, mandating disclosure of gender and racial diversity on corporate boards, and stronger harassment and discrimination rules for the workplace. He has appointed experts in systemic racism to a number of economic positions. His appointment of Deb Haaland as Secretary of the Interior, where she will be the first Native American in the cabinet, drew praise from social-justice-minded observers. In her position, Haaland will oversee public lands, potentially with social implications for infrastructure projects.

Investors can pick out human capital leaders

Investors who, **like APG**, look for effective human capital management in portfolio companies may be better placed to weather the changes and succeed.

> In the short term, changes under a Biden Administration may impose monetary or other burdens on employers, more transparency requirements, higher wages, unionization efforts and legal liabilities. New regulations will raise the bar on human capital management practices for all companies.

ESG Regulations: a new course

Under Biden, changes at both the Securities and Exchange Commission (SEC) and the Department of Labor (DOL) might lead to greater disclosure of ESG-related data and fewer regulations against using sustainability criteria in pension fund investing.

Focus on disclosures

The SEC will have a Democratic majority when Biden appoints a new chairperson in June of 2021. It may then institute more direct climate disclosures, counter-acting S-K (reporting) rule changes passed under SEC chairman Jay Clayton, which took a "principles-based approach" to disclosure. Sitting SEC commissioner Crenshaw, a Democrat, opposed

Possible paths on employment

1.Reverse Trump's rollback requirement to track of workplace injuries and illnesses and report them to the Occupational Safety and Health Administration.

2.Press for the full removal of the joint-employer rule passed by Trump's DOL in January of 2020, then rejected in court. The rule narrows the criteria by which a company can be considered a "joint employer" (of a contract worker, usually) The rule was declared invalid by a federal district court but litigation is ongoing, a Biden DOL could 'pause' the rule and enforce against those who still apply it.

3.Issue Occupational Safety and Health (OSHA) standards for the pandemic.

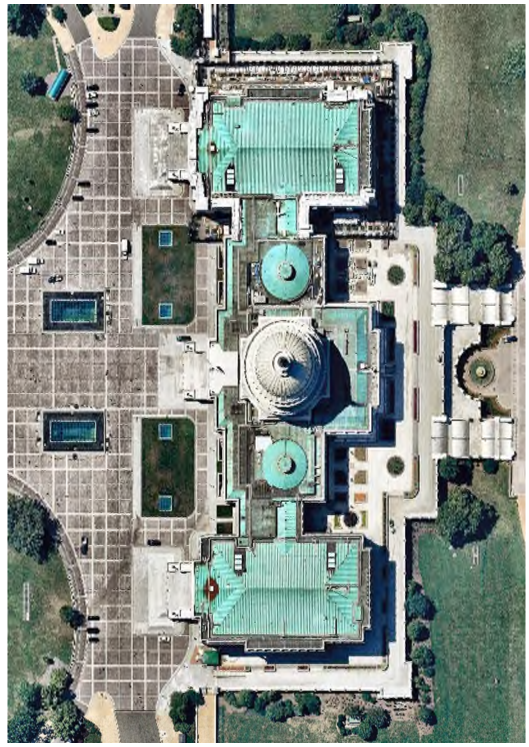
4.Remove Trump's executive order against diversity trainings.

5. Slow the tide of regulation allowing employers to hire workers as contractors. In addition to the state of California's regulation exempting app-based platforms from classifying their workers as employees, on Jan 6th the Trump DOL passed a rule widening the definition of a contract worker. Biden may reverse this rule-change and provide protections against "worker misclassification" a priority stated on his campaign website.

the changes under Clayton and suggested there will be a focus on instituting specific climate and human capital disclosure requirements. Biden himself has listed climate disclosures as a priority on his campaign website. Biden might also push legislation that stalled under previous administration such as: the "ESG Disclosure Simplification Act of 2019," setting up a sustainable finance advisory committee, and the "Climate Risk Disclosure Act of 2019," requiring emissions disclosures and disclosure of mitigation strategy, but this will depend on the Democrats' thin margins in the House and Senate.

A battle over ESG in pension investing

The DOL may repeal a rule-change affecting pension plans under the Employee Retirement Income Security Act (ERISA), which "prohibits fiduciaries from subordinating the interests of plan participants and beneficiaries in retirement income and financial benefits under the plan to non-pecuniary goals" and allows ESG considerations only if they are demonstrated to be material economic considerations under "generally accepted economic theories." Biden might amend this change by issuing sub-regulatory guidance on ESG factors. The Trump DOL also issued rules on shareholder rights for retirement plan fiduciaries under ERISA, forbidding fiduciaries from engaging in proxy voting or hiring proxy advisory firms for reasons that are non-pecuniary. It is speculated that Biden might revisit these rules.



United States Capitol building on January 7, 2020. Source: Daily Overview.

Outcomes

By taking initiative on disclosures and ERISA regulations, Biden will signal a friendlier environment for responsible investing. This could cause demand in the industry to swell which means more 'allies' **for APG**, driving the market and engaging companies on sustainability performance.

With regulation changes on ERISA, ESG criteria may continue growing as valid, widely recognized, and accepted criteria for investors. **For APG** disclosure rules would improve the quantity and quality of information available on portfolio companies. Eventually this will help us in performing our diligence and factor in ESG considerations in investment processes more effectively.

Conclusion

The election of Joe Biden and Kamala Harris, together with Democratic control over Congress, promises significant changes in the direction of US politics over the coming years. How much of their agenda they can accomplish remains unknown, especially with larger issues that may require compromise in Congress. However, at the level of appointments to major agencies and executive orders, the Biden administration will be **focused on progressing regulations, undoing the rollback of the Trump administration and on changing the tone for key issues like climate change, employment and financial regulations**. These changes may carry costs to business and will certainly require adjustment. They may also **accelerate the adoption of sustainability policies, increase ESG disclosures, incentivize innovation and create regulatory risk for laggards on climate and workforce management.** All of this has the potential to reward sustainable investment strategies.

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