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GC Cheat Sheet: The Hottest Corporate News Of The Week

By **Michele Gorman**

Law360 (March 19, 2021, 1:04 PM EDT) -- Events and issues that defined the past year prompted a slew of new shareholder proposals for general counsel and their companies to consider in 2021, and the U.S. Equal Employment Opportunity Commission said large private employers will have to file their annual workplace demographic statistics with the agency by the end of July.

These are some of the stories in corporate legal news you may have missed in the past week.

Shareholders' Main Priorities For the Year Include Social Issues

The events and issues that defined the past year — the coronavirus pandemic, racial justice, the Capitol riot — prompted a slew of new shareholder proposals for general counsel and their companies to consider in 2021, including initiatives related to corporate political spending, diversity and climate change, according to a new report.

The Proxy Preview 2021 was released Thursday by investor advocate groups As You Sow, which published the report, and the Sustainable Investments Institute and Proxy Impact, which co-authored it.

The 92-page report shows 435 proxy resolutions were filed with the U.S. Securities and Exchange Commission on environmental, social and governance, or so-called ESG issues, with about 300 of them likely to reach a vote at corporate annual meetings this spring. Companies challenged and won exclusion of 24 proposals, while 74 more challenges have yet to be decided.

A record number of resolutions, about 90, have been withdrawn after companies and proponents reached agreements.

EEOC Says Diversity Data Collection Will Stop in July

The U.S. Equal Employment Opportunity Commission announced that large private employers will have to file their annual workplace demographic statistics with the agency by the end of July, after last year's collection deadline was delayed by the coronavirus pandemic.

In setting the July deadline for employers to submit their so-called EEO-1 Component 1 data surveys, which businesses with over 100 workers normally turn in every year, the commission on March 12 rounded out its announcement earlier this year that the data collection for both calendar years 2019 and 2020 would start in April.

Component 1 data includes demographic information on employees' race, gender and ethnicity by job category, such as executives, managers, and others.

The agency said on its website that the last filing day in July will be announced when the collection bid kicks off, and that employers would receive more information in April. The filing system will also get an update to make it more user-friendly, but the information it asks for will remain the same, the EEOC said.

Why Legal, Communications Should Collaborate

Companies should strive to have their in-house counsel and communications teams work together on their communication strategies, according to a survey released by the Georgia chapter of the Association of Corporate Counsel.

Not only should communications teams make sure that any questionable matter is first vetted by a company's legal counsel, but legal counsel should reach out to communications when a sensitive legal matter involving the company needs to be disseminated, according to the survey promoted earlier this month by the association.

The survey of 43 member respondents suggests that integrating legal and communications teams is especially critical when a company's public relations concerns litigation.

"Litigation PR starts before the problem arises and before you have a claim or lawsuit," Yoon Ettinger, Southern Company Gas' chief counsel for field operations and litigation, said as part of a webinar accompanying the survey. "The work you do daily to build a reputation of quality and trust is what builds the foundation for litigation PR."

CFTC Says New Climate Unit Could Activate Regulatory Changes

The Commodity Futures Trading Commission launched a new climate risk unit Wednesday that will support the ongoing development of derivatives products that aim to address climate risk, a move the agency said will help it better understand the products while potentially spurring future regulatory or supervisory changes.

The unit will also help the agency take a leading role in global discussions surrounding the creation of consistent standards for derivatives products, while supporting the development of more reliable climate risk-related data resources, the agency said.

"Climate change poses a major threat to U.S. financial stability, and I believe we must move urgently and assertively in utilizing our wide-ranging and flexible authorities to address emerging risks," CFTC acting Chair Rostin Behnam said in a statement. "The CFTC's unique mission focused on risk mitigation and price discovery puts us on the front lines of this effort."

The derivatives industry in recent years has created new products that help weigh climate risk, which the agency noted could play a key role in "understanding, pricing, and addressing climate-related risk and transitioning to a low-carbon economy."

How GCs Should Prepare to Comply With Virginia's New Privacy Law

Virginia's new consumer data privacy law will pose challenges for general counsel over the next two years, and how well they adapt will depend on whether they need to start from scratch with implementing the necessary processes and procedures, or if they're seasoned veterans who have dealt with other data transparency and access concepts.

Virginia's Consumer Data Protection Act, like the landmark California Consumer Privacy Act signed into law in June 2018, is set to establish a host of data privacy rights, including consumers' right to access, correct, delete and obtain a copy of their personal data from companies and to opt out of the processing of this information for targeted advertising purposes.

The Old Dominion's law, the second piece of comprehensive privacy legislation in the U.S., departs in several significant respects from its California counterpart. For example, it adopts language and data assessment requirements that are more on par with the European Union's General Data Protection Regulation, and leaves it completely up to the state attorney general rather than consumers to enforce the law.

Virginia Gov. Ralph Northam signed the data privacy measure into law earlier this month. If enacted as currently drafted, it will take effect Jan. 1, 2023, though experts say some changes to the law could occur before then.

Biden Officials Consider Software Vendor Cybersecurity Grades

The Biden administration is considering rolling out a cybersecurity rating scale for software companies, in a system that would resemble sanitation grades given to New York City restaurants or the security labels that Singapore puts on online-connected devices.

An executive order that will include ideas for how such a system will look is in the works and will be released "in the next few weeks," a senior administration official told reporters during a recent press briefing.

The plan would aim to create a more transparent "market" for cybersecurity following a slew of major security incidents that private companies and public institutions are currently grappling with, stemming from cyberattacks targeting third-party IT provider SolarWinds Corp. and Microsoft Exchange's email servers, the official said, speaking on the condition of anonymity.

The rating system would be inspired by both New York City's sanitation grades — in which restaurants are required to post a letter grade on the windows after receiving inspections from city health authorities — and Singapore's cybersecurity labelling system, covering devices like "smart" or internet-connected light systems or baby monitors.

Nonlawyer-Owned Firm Slated to Open Out of Utah 'Sandbox'

A company specializing in registered agent and corporate filing services said March 15 it is set to launch a law firm in Utah this month as the state experiments with a novel program permitting nonlawyer-owned entities to offer legal services.

Law on Call, owned by Wyoming-based Northwest Registered Agent LLC, is one of 20 organizations to receive approval so far to take part in a regulatory "sandbox" program centered around removing barriers to practicing law and finding innovative ways to meet the legal needs of the public.

The Utah Supreme Court last August authorized the two-year pilot program, which allows organizations to deliver legal services outside of an existing regulatory framework on law firm ownership or investment. It also includes more liberal regulations on who can practice law.

The firm has hired three licensed Utah attorneys and two paralegals, and hopes to significantly expand the operation, Northwest Registered Agent's president, Tom Glover, told Law360 Pulse.

Legal Leaders are Pausing Over Vaccinations, Office Return

Half of legal leaders who responded to a recent poll by Morrison & Foerster LLP said their organizations would not require employees to be vaccinated before returning to the office, while 40% were unsure and the remaining 10% plan to require a shot, according to results released March 15.

In addition to a good deal of uncertainty around whether to require a vaccine, the legal leaders — made up of in-house counsel and law firm leaders — were also on the fence about when a return to the office would happen after working from home during the coronavirus pandemic, according to the results of the early March poll of 350 respondents.

If assured of their office's safety, 41% of leaders of legal functions polled by Morrison & Foerster said they would not return, and 11% were unsure. Asked when their company will return to the office, 48% said they did not know.

"These results indicate to me that returning to the office will not be as simple as turning the lights back on," said Janie Schulman, leader of the law firm's coronavirus task force. "There is still widespread hesitation among the workforce. It's going to take time, and for some businesses, a complete return won't happen at all."

Trade Groups Support New PPP Deadline, Citing Tech Issues

Dozens of trade groups representing a variety of industries said in a letter published March 15 they support a bipartisan and bicameral effort to extend the Paycheck Protection Program's March 31 deadline because the forgivable loan program has faced delays following some technical issues.

Nearly 100 organizations said in the letter they were in "strong support" of a bill introduced March 11 called the PPP Extension Act of 2021, which would extend the deadline to apply to the Small Business Administration program from the end of March to May 31.

The trade associations that signed the March 15 letter hailed from the health care, banking, insurance, hospitality and travel, construction, real estate, retail, food and beverage and transportation industries.

The groups said their members were "highly concerned" about issues related to taxpayer-identification numbers and other technical difficulties that have led to holdups and rejections for applicants.

SEC Looks For Public's Help as ESG Initiatives Progress

The U.S. Securities and Exchange Commission on March 15 asked for the public's help developing a new

ESG disclosure framework, detailing a number of related initiatives that the agency's acting chief says will put "all hands on deck" to get investors the information they are demanding — but currently lack.

Speaking at a virtual conference held by the Center for American Progress, Allison Herren Lee announced a new request for public comments on a so-called environmental, social and governance-related framework, and she pointed to a string of recent measures to reevaluate existing disclosure rules that impact investors and shareholders.

Meanwhile, Peter Driscoll, the director of the agency's examinations division, highlighted at a separate conference certain ESG disclosure red flags the agency will be looking out for in 2021, while revealing that his unit is working on an ESG-related risk alert that he hopes will be out in the "next few weeks."

In her speech, Lee stressed that the standardized disclosure framework will seek to provide investors with the ESG-related information they are demanding to make more informed investment decisions, which will ultimately require that the agency identify "any material gaps or misstatements" in issuers' disclosures of ESG-related risks.

Microsoft Server Hack Creates Discussion About Victim Expectations

Following a cyberattack on Microsoft's Exchange email servers by hacking crews that the software giant says target law firms and defense contractors, some cybersecurity pros are calling for companies to enact safeguards that would apply even if their vendors are hacked.

The potential looting of victim companies' email files by threat actors whom Microsoft has linked to the Chinese government is yet another indication that any third-party vendor can be vulnerable to attack — even one of the world's biggest companies, cybersecurity experts say. A top White House official said March 12 that the scope of these threat actors is still being probed.

Given how often vendors are breached, organizations should consider taking measures to protect their data or mitigate the damage of incidents, going beyond existing efforts to vet the security of third-party products, some cybersecurity pros say.

"We need to turn our attention to expecting that software is going to have issues, and planning for the failure," said Serge Jorgensen, co-founder and president of Sylint, a cybersecurity and data forensics company.

OSHA Launches Biden-Ordered Virus Protection Program

The Occupational Safety and Health Administration has rolled out an initiative to bolster its efforts to protect workers at the highest risk of contracting COVID-19 on the job, a direct response to a January executive order from President Joe Biden.

Through the new national program launched March 12, OSHA said it will focus its inspection and enforcement efforts on "companies that put the largest number of workers at serious risk of contracting the coronavirus," while protecting workers against retaliation for logging complaints about those risks.

"This program seeks to substantially reduce or eliminate coronavirus exposure for workers in companies where risks are high, and to protect workers who raise concerns that their employer is failing to protect them from the risks of exposure," Jim Frederick, the agency's principal deputy assistant secretary, said in a statement.

Under the program, OSHA will conduct both new inspections as well as follow-ups of work sites inspected in 2020 to make sure that potentially hazardous conditions have been corrected, the agency said in a memo.

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