

## Top Issues in 2021: Public Companies

The economic, financial, and regulatory outlook of 2021 is shaped by the COVID-19 pandemic and shifts in the political and cultural landscape. Strained intra-European relations and Middle Eastern conflicts will also continue to present risks to global markets and international trade relations. In preparing for the remainder of 2021 and the fallout of these issues, public companies should evaluate their employer-employee dynamics, perceptions among retail investors and the wider public, and preparedness for significant regulatory changes. Companies should also consider their access to experts who can provide sound and responsive advice in difficult situations.

### CONTINUED IMPACT OF COVID-19

Public companies will need to adapt to the far-reaching and long-term impacts of the COVID-19 pandemic. One obvious impact has been the widespread adoption of technology-facilitated remote work. This may become a fixture of modern work life with many companies already shifting to flexible workspaces on a permanent basis. Companies will need to determine how such a significant change could impact them directly and indirectly, for example by considering the company's office space needs and ability to train new hires and develop existing talent. While the pandemic forced many public companies to postpone annual meetings or change to wholly or largely virtual meetings, companies have now had a year to assess that experience and decide whether some of those changes will become permanent. As more Americans are vaccinated, public companies will need to consider return-to-work issues, including whether to require vaccines. Finally, government responses to the pandemic have added to the national debt and the Biden administration has already pointed to potential increases in or changes to corporate and capital gains taxes.

In responding to these changes, companies will need to assess all of their legal options and obligations, including their duty to disclose the many new risks posed by the pandemic. Companies should also begin to implement internal systems to prepare for the financial and legal impacts that the next national or global disruption will create.

### POLITICAL AND CULTURAL SHIFTS

Democratic control of all three branches of government in 2021 is already impacting federal legislative agendas and regulatory enforcement. Federal and state governments are debating or have already enacted increases in the minimum wage, measures to limit or reduce healthcare costs, diversity requirements for board composition, and paid family and medical leave.

Significant changes will also occur at a regulatory level, with agencies expected to issue more restrictive rules and apply a heavier hand in enforcing regulations, at least for the next four years. Already, for example, the SEC has announced the creation of a Climate and ESG Task Force in the Division of Enforcement. The task force will develop initiatives to proactively identify ESG-related misconduct, including through use of sophisticated data analysis to mine and assess information across registrants to identify material gaps or misstatements in issuers'

disclosure of climate risks. In addition, with a new SEC Chairman, a new focus on enforcement is expected, with increased scrutiny of financial reporting in response to the pandemic, increased focus on insider trading violations, and disclosures regarding volatility in a company's stock price. The SEC's approach forms part of a wider trend across federal agencies. For example, the Consumer Financial Protection Bureau is set to reverse policies from the previous administration "that weakened enforcement and supervision" and take "bold and swift" enforcement action on racial equity. As regulatory changes ramp up, companies will need to regularly evaluate their compliance with all applicable laws, including those authorized by the Securities Acts.

### **GME, AMC, AND ROBINHOOD: THE FALLOUT**

Earlier this year, news headlines were dominated by the rocketing stock price of GameStop Corp. as active retail investors forced a short squeeze that left hedge funds and other short sellers incurring heavy losses to cover their positions. The brokerage app Robinhood limited trading in GameStop stock after clearinghouses required greater capital deposits amid high trading volume. The ensuing outcry among retail investors and politicians from both sides of the political aisle led to significant negative press for and a federal lawsuit against Robinhood, a Congressional hearing into the issue, and investigations by state attorneys general. The SEC has also stated that it will review social media sites like Reddit for signs of fraud and "closely review actions taken by regulated entities that may disadvantage investors or otherwise unduly inhibit their ability to trade certain securities." Trade settlement times may also decrease and blockchain technology may play a greater role in shortening settlement times further.

Public companies should remain vigilant of changing regulations and disclosure standards. As the SEC collaborates with the Treasury, Federal Reserve Bank, and CFTC to discuss market volatility, companies should also be aware that retail investors are not a passive, homogenous mass, and should remain vigilant of the perceptions of their stock among retail as well as institutional investors.

### **CONTINUED FOCUS ON DIVERSITY AND INCLUSION**

With continued attention on diversity and inclusion including from institutional investors and proxy advisers, Nasdaq proposed new rules to require diverse boards and public disclosure regarding diversity statistics. While the SEC has delayed the effectiveness of these rules seeking additional input, public companies should expect to receive increased scrutiny from institutional and retail investors as well as the public if their boards and executive leadership teams do not take strides to increase their diversity. Additionally, a number of states are enacting diversity laws including California, which will require public companies to have at least one underrepresented community on the board of companies headquartered in California.

### **HOW WE CAN HELP**

Our Michael Best [Securities & Capital Markets Team](#) continue to keep a finger on the pulse on these top trends in 2021. Please reach out to any of our team members to learn more about how we can help you navigate this ever-changing landscape.

## Primary Contacts

---



**Michael H. Altman**  
Partner and Co-Leader,  
Securities & Capital Markets  
Milwaukee, WI  
mhaltman@michaelbest.com  
T. 414.225.4932



**Kevin C. Timken**  
Partner and Co-Leader,  
Securities & Capital Markets  
Salt Lake City, UT  
kctimken@michaelbest.com  
T. 801.924.4124



**Joshua B. Erekson**  
Partner  
Salt Lake City, UT  
jberekson@michaelbest.com  
T. 801.833.0505



**Iqan Fadaei**  
Associate  
Cottonwood Heights  
ifadaei@michaelbest.com  
T. 385.695.6457



**James R. Kruse**  
Partner  
Salt Lake City, UT  
jrkruse@michaelbest.com  
T. 801.924.4127



**Gregory J. Lynch**  
Partner  
Chicago, IL  
gjlynch@michaelbest.com  
T. 312.596.5840



**Betsy T. Voter**  
Partner  
Salt Lake City, UT  
btvoter@michaelbest.com  
T. 801.924.4105