

August 15, 2018

Corporate Governance; Stakeholder Primacy; Federal Incorporation

Senator Elizabeth Warren has introduced legislation to make all corporations with \$1,000,000,000 of annual revenue subject to Federal corporate governance (by requiring them to be chartered as a United States corporation). The [Bill](#) rejects shareholder primacy and embraces stakeholder governance; not less than 40% of the directors to be elected by the employees.

The Federal charter would provide that directors consider the interests of all corporate stakeholders – including employees, customers, suppliers, shareholders, and the communities in which the corporation operates. The Bill also has a director business judgment provision, promoting long-term investment and facilitating rejection of takeover bids, modeled on constituency statutes in some 30 states.

The Bill prohibits officers and directors from selling shares within 5 years after receiving them.

Political contributions are prohibited unless approved by 75% of the directors and 75% of the shareholders.

While the Bill has a number of provisions that would reduce short-termism and virtually eliminate attacks by activist hedge funds, most corporations will oppose the legislation and forego the benefits, if the price is Federal chartering. The Bill is another step in the effort to promote long-term sustainable investment and reject shareholder primacy. In light of the positions recently taken by BlackRock, State Street and Vanguard, the Investment Stewardship Group, The World Economic Forum and many institutional investors and asset managers, it is clear that the effort to reverse shareholder primacy will continue to pick up steam.

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