

Senator Warren's Accountable Capitalism Act Modeled on the Public Benefit Corporation

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The Accountable Capitalism Act, introduced by Senator Warren, would require companies with more than \$1 billion in revenue to obtain federal charters from a newly formed Office of United States Corporations at the Department of Commerce. As explained in [a WSJ op-ed](#), Senator Warren is concerned that companies have shifted to focusing solely, or largely, on being accountable to shareholders through maximizing returns for owners.

Under the federal charter, directors of these companies must consider the interest of all stakeholders, including not only shareholders but also employees, customers and the communities in which the companies operate. Specifically, a U.S. corporation must have the purpose of creating a "general public benefit," meaning a material positive impact on society resulting from the business and operations of the company, taken as a whole.

The idea is derived from the benefit corporation model that 33 states have adopted. The public benefit companies listed in the one-page description about the proposed statute, such as Patagonia, are private companies. In February 2017, the first public benefit corporation to [IPO made news](#).

The Act requires that at least 40% of its directors must be selected by employees, under rules to be promulgated by the SEC. In addition, directors and officers may not sell shares within five years of receiving them or within three years of a company stock buyback. Finally, all political expenditures must be approved by at least 75% of shareholders and 75% of directors.

The Act limits the personal liability of any officers and directors for actions, or lack thereof, in the pursuit of a general public benefit so long as they act in good faith. The company also is not liable for the failure to pursue or create a general public benefit.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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