

# IR UPDATE WEEKLY

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## Shareholders Vs. Stakeholders

*Stakeholder is certainly in the top 10 list of words that get bandied about Washington... [The term] is so popular precisely because it is so elastic. In the corporate context, however, that elasticity has some troubling implications. It is used to refocus corporate decision-makers on constituencies other than their shareholders. In the stakeholder-centric view of the world, a corporation and its directors owe a duty not just to shareholders, but to a broader group of stakeholders.” --[Hester Peirce, SEC Commissioner, September 21, 2018](#)*

Commissioner Peirce’s comments came after California lawmakers passed Senate Bill 826. This bill, which was recently signed into law by Governor Jerry Brown, requires that California companies and non-California companies with headquarters in the state must have at least one woman on their boards by the end of 2019. By the end of 2021, companies with five directors must have two female directors or three female directors if there are six or more directors.

Peirce, who recently met with NIRI members, says that she doesn’t dispute the idea that companies perform better with diverse boards, but notes that companies “looking out for their long-term value already have a strong incentives to take that evidence into consideration along with all the other factors that may affect the company’s long-term value.” She openly wonders if policymakers start favoring the interests of specific stakeholders “introduces uncertainty and political influence into corporate operations.”

Her remarks also follow the August introduction of the “[Accountable Capitalism Act](#)” by U.S. Senator Elizabeth Warren (D-MA). The senator wants to ensure that companies focus on their obligations to employees, customers, and the community. Senator Warren believes that the interests of stakeholders must be balanced against the interests of shareholders. She would achieve this by requiring corporations to be federally chartered, mandate that employees elect at least 40 percent of directors, require 75 percent approval of shareholders on all political expenditures, and restrict insiders from selling incentive stock for five years. Expect more confiscatory

proposals from Senator Warren as she prepares to run for president in 2020.

Many corporate leaders, investors, and others have challenged the issuer community to diversify boards and executive suites and be more responsible on social and environmental issues. Indeed, some of the “incentives” that Commissioner Peirce spoke of are coming into market focus. But no one from the issuer and investor community has called for the governmental regulation proposed by Senator Warren and recently adopted in California.

Perhaps this is time to recall that famous quote, often wrongly attributed to Thomas Jefferson: “Eternal vigilance is the price of liberty.” Be prepared for coming battles to test the idea of the primacy of shareholder rights versus the rising tide of stakeholder rights. Be vigilant and be ready to stand up and be counted when the time comes.

All the best,  
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P.S. NIRI East, held in Boston in September, was a huge success! Check out NIRI's full [calendar](#) of upcoming professional development programs, including two finance seminars in New York on November 5 and 6, and the Senior Roundtable Annual Meeting on Nov. 28-30.